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Vol. VIII

TRANSCRIPT OF RECORD

(Pages 3137 to 3841)

Supreme Court of the United States

OCTOBER TERM, 1947

No. 79

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

PARAMOUNT PICTURES, INC., PARAMOUNT FILM DISTRIBUTING CORPORATION, LOEW'S INCORPORATED, ET AL.

No. 80

LOEW'S, INCORPORATED, RADIO-KEITH-ORPHEUM CORPORATION, RKO RADIO PICTURES, INC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 81

PARAMOUNT PICTURES, INC., AND PARAMOUNT FILM DISTRIBUTING CORPORATION, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 82

COLUMBIA PICTURES CORPORATION AND COLUMBIA PICTURES OF LOUISIANA, INC., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 83

UNITED ARTISTS CORPORATION, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED MAY 8, 1947.

SUPREME COURT OF THE UNITED STATES

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No. 83

UNITED ARTISTS CORPORATION, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

No. 84

UNIVERSAL PICTURES COMPANY, INC. (SUED HEREIN AS UNIVERSAL CORPORATION AND UNIVERSAL PICTURES COMPANY, INC.), UNIVERSAL FILM EXCHANGES, INC., AND BIG U. FILM EXCHANGE, INC., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCT. 8, 1947.

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No. 85

AMERICAN THEATRES ASSOCIATION, INC., SOUTHERN CALIFORNIA THEATRE OWNERS ASSOCIATION, JOSEPH MORITZ, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, PARAMOUNT PICTURES, INC., PARAMOUNT FILM DISTRIBUTING CORPORATION, ET AL.

No. 86

W. C. ALLRED, CHARLES E. BEACH AND ELIZABETH L. BEACH, PARTNERS TRADING AS BEACH AND BEACH, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, PARAMOUNT PICTURES, INC., PARAMOUNT FILM DISTRIBUTING CORPORATION, ET AL.

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[fol. 3137] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 87-273

UNITED STATES OF AMERICA, Plaintiff,

v.

PARAMOUNT PICTURES INC., PARAMOUNT FILM DISTRIBUTING CORPORATION; Loews, Incorporated; Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, RKO Midwest Corporation; Warner Bros. Pictures Inc., Vitagraph, Inc., Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation, National Theatres Corporation; Columbia Pictures Corporation, Screen Gems, Inc., Columbia Pictures of Louisiana, Inc.; Universal Corporation, Universal Pictures Company, Inc., Universal Film Exchanges, Inc., Big U Film Exchange, Inc.; United Artists Corporation, Defendants.

AMENDED AND SUPPLEMENTAL COMPLAINT—Filed November 14, 1940.

Leave of Court having been first obtained, the United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, hereby amends and supplements the petition filed herein on July 20, 1938, and the bills of particulars filed pursuant thereto, by substituting therefor this amended and supplemental complaint against the following defendants:

Paramount Pictures, Inc., Paramount Film Distributing Corporation; Loew's, Incorporated; Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, RKO Midwest Corporation; Warner Bros. Pictures, Inc., Vitagraph, Inc., Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation, National Theatres Corporation; Columbia Pictures Corporation, Screen [fol. 3138] Gems, Inc., Columbia Pictures of Louisiana, Inc.; Universal Corporation, Universal Pictures Company, Inc., Universal Film Exchanges, Inc., Big U Film Exchange,

Inc.; United Artists Corporation, defendant corporations, and for its complaint plaintiff alleges, upon information and belief, as follows:

I. Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," said Act being commonly known and hereafter referred to as the Sherman Act, against the above-named defendants in order to prevent violations by them, jointly and severally, as hereinafter alleged, of Sections 1 and 2 of said Act.

2. The alleged unlawful acts and violations hereinafter described, including the unlawful monopoly, attempts to monopolize, combinations and conspiracies to monopolize, and contracts, combinations and conspiracies to restrain trade and commerce among the several states and territories of the United States have been and are conceived, carried out and made effective, in part, within the Southern District of New York, and many of the unlawful acts done in pursuance thereof have been performed by the defendants, or some of them, and their respective representatives, within said District. The interstate trade and commerce involved in the motion picture industry, as hereinafter described, is carried on, in part, within the said District.

II. Description of Defendants

3. (a) Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 1501 Broadway, New York, New York, and is engaged in the business of produc- [fol. 3139] ing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

(b) Paramount Film Distributing Corporation, a wholly owned subsidiary of Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1501 Broadway, New York, New York, and is engaged in the distribution branch of the industry.

4. Loew's, Incorporated, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1540 Broadway, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

5. (a) Radio-Keith-Orpheun. Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries.

(b) RKO Radio Pictures, Inc., a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the production and distribution branch of the industry.

(c) Keith-Albee-Orpheum Corporation is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures. Approximately 99% of its common stock and 33% of its preferred stock are held by Radio-Keith-Orpheum Corporation.

[fol. 3140] (d) RKO Proctor Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of New York, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures.

(e) RKO Midwest Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Ohio, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures.

6. (a) Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of Dela-

ware, having its principal place of business at 321 West 44th Street, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

(b) Vitagraph, Inc., a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and is engaged in the business of distributing motion pictures.

(c) Warner Bros. Circuit Management Corporation, a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and, among other things, acts as booking agent for the exhibition interests of the said Warner Bros. Pictures, Inc.

7. (a) Twentieth Century-Fox Film Corporation is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 444 West 56th Street, New York, New York, and is engaged in [fol. 3141] the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or association companies, in various parts of the United States and in foreign countries.

(b) National Theatres Corporation, approximately 42% of the capital stock of which is owned and controlled by Twentieth Century-Fox Film Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 2854 Hudson Boulevard, Jersey City, New Jersey and is a holding company for the theatre interests of the said Twentieth Century-Fox Film Corporation.

8. The defendants described above in Paragraphs 1 to 7, inclusive, will be referred to sometimes hereinafter as "producer-exhibitor defendants."

9. (a) Columbia Pictures Corporation is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 729 Seventh

Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

(b) Screen Gems, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of California, with a place of business at 700 Santa Monica Boulevard, Hollywood, California, and is engaged in the business of producing motion pictures.

(c) Columbia Pictures of Louisiana, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of Louisiana, with a place of business at 150 South Liberty Street, New Orleans, Louisiana, and is engaged in the business of distributing motion pictures.

[fol. 3142] 10. (a) Universal Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries.

(b) Universal Pictures Company, Inc., a subsidiary controlled by Universal Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of producing motion pictures.

(c) Universal Film Exchanges, Inc., a wholly owned subsidiary of Universal Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of distributing motion pictures.

(d) Big U Film Exchange, Inc., a wholly owned subsidiary of Universal Corporation, is a corporation organized and existing under the laws of the State of New York, with a place of business at 1250 Sixth Avenue, New York, New

York, and is engaged in the business of distributing motion pictures.

11. United Artists Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 729 Seventh Avenue, New York, New York, and is engaged in distribution of motion pictures in various parts of the United States and in foreign countries.

12. All of the defendants hereinbefore described as engaged in the distribution either directly or through subsidiaries, will be referred to sometimes hereinafter as the "distributor defendants."

[fol. 3143] 13. All of the defendants hereinbefore described as engaged in production, either directly or through subsidiaries, will be referred to sometimes hereinafter as "producer defendants."

III. Definition of Terms.

14. The following terms when used in this complaint have the meaning indicated:[1]

Production

15. (a) *Producer.*—Any person, partnership, association or corporation engaged in the production of motion pictures.

(b) *Major Producer.*—One which produces motion pictures for release by a major distributor[2] pursuant to a prior understanding or agreement with such major distributor.

(c) *Independent Producer.*—One which is not a major producer.

(d) *Feature.*—Any motion picture, the length of the film of which is approximately five thousand feet (usually five reels) or more.

(e) *First Class Features.*—A feature which grosses in excess of $400,000 in film rentals from exhibition within the United States.

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[1] For convenience, they have been grouped under headings describing the three principal branches of the industry; production, distribution and exhibition.

[2] For definition of major distributor see Paragraph 16(b) below.

(f) *Short Subject.*—A motion picture, the length of the film of which is less than five thousand feet (five reels), and is usually two or three thousand feet.

(g) *News Reel.*—A motion picture, the length of the film of which is less than five thousand feet and which portrays events of general current interest.

[fol. 3144] Distribution

16. (a) *Distributor.*—Any person, partnership, association or corporation engaged in the business of licensing motion pictures for exhibition and distributing the positive prints of such motion pictures to exhibitors.

(b) *Major Distributor.*—A distributor which is a defendant herein or is controlled by a defendant herein.

(c) *Independent Distributor.*—One which is not a major distributor.

(d) *State Rights Distributor.*—An independent distributor which does not operate a system of national exchanges but buys from an independent producer the exclusive right to distribute its pictures in a particular state or territory.

(e) *Exchange.*—An office maintained by a distributor for the purpose of soliciting license agreements for the exhibition of its pictures in theatres situated throughout the territory served by the exchange, and for the physical distribution of such films throughout this territory. An exchange usually has facilities for the receipt, storage and subsequent shipment to exhibitors of films and advertising matter concerning them.

(f) *Franchise.*—A licensing agreement, or series of licensing agreements entered into as part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by the distributor during the entire period of the agreement.

(g) *Block Booking.*—The practice of licensing, or offering for license, one feature, or group of features, upon condition that the exhibitor shall also license all or a majority of all of the features released by a distributor during a period of one year or more.

[fol. 3145] Exhibition

17. (a) *Exhibitor.* Any person, partnership, association or corporation engaged in the operation of a theatre for the exhibition of motion pictures.

(b) *Affiliated Theatre.* A theatre owned, controlled or managed by a major producer or distributor, or in the ownership, control or management of which a major producer or distributor has a financial interest.

(c) *Unaffiliated Theatre.* One which is not an affiliated theatre.

(d) *Metropolitan Theatre.* A theatre located in one of the following key cities: Albany, New York; Atlanta, Georgia; Baltimore, Maryland; Boston, Massachusetts; Brooklyn, New York, Buffalo, New York; Charlotte, North Carolina; Chicago, Illinois; Cincinnati, Ohio; Cleveland, Ohio; Dallas, Texas; Denver, Colorado; Des Moines, Iowa; Detroit, Michigan; Houston, Texas; Indianapolis, Indiana; Kansas City, Missouri; Los Angeles, California; Memphis, Tennessee; Milwaukee, Wisconsin, Minneapolis, Minnesota; New Haven, Connecticut, New Orleans, Louisiana; New York, New York; Newark, New Jersey; Oklahoma City, Oklahoma; Omaha, Nebraska; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; Portland, Oregon; San Francisco, California; St. Louis, Missouri; St. Paul, Minnesota; Salt Lake City, Utah; Seattle, Washington; Washington, District of Columbia [1]

(e) *First Run Theatre.* One which customarily exhibits the first-class feature pictures released by one or more major distributors on a first run showing in the city or town in which it is located.

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[1] The cities listed above are a group in which certain statistical analyses of first-run exhibition have been made by the petitioner and the term metropolitan has been adopted as a convenient means of referring to theatres in these cities. They include the ten largest cities in the United States and all of the cities in which any of the defendants maintains an exchange. They are all key cities, as defined in Paragraph 17 (c) hereof. Brooklyn was treated as a separate city in the petitioner's analyses and is, therefore, referred to as such herein.

(f) *Theatre Circuit.* A group of more than five theatres owned, controlled, or managed by the same person, partner-
[fol. 3146] ship, or corporation; or a group of more than five theatres which combine with each other, through a common agent, in licensing film.

(g) *Circuit Theatre.* Any theatre in a theatre circuit.

(h) *Independent Theatre.* One which is not a circuit or affiliated theatre.

(i) *Motion Picture Season.* The period from September 1 of one year to August 31 of the next.

(j) *Release.* The act of making prints of a motion picture available for public exhibition in theatres.

(k) *National Release Date.* The date upon which a motion picture is first released generally throughout the United States.

(l) *Trade Showing.* A private exhibition of a film for the trade prior to national release.

(m) *Pre-release.* A public exhibition of a motion picture prior to national release.

(n) *Road Show.* A public exhibition of a motion picture in advance of national release in a limited number of theatres at admission prices higher than those customarily charged in first-run theatres in the areas where they are located.

(o) *Key City.* One of such size and strategic location that the first-run exhibition of a motion picture therein effectively advertises such motion picture among exhibitors and the public in a wide area surrounding such city.

(p) *First Run.* The first exhibition of a motion picture in a given zone after national release.

(q) *Second Run.* The exhibition of a motion picture in any zone next subsequent to its first run.

(r) *Repeat or Subsequent Run.* Any exhibition of a motion picture in a zone subsequent to its first run.

(s) *Clearance.* The period of time which must elapse between runs of the same picture within a particular area or in specified theatres.

[fol. 3147] (t) *Zone.* A specified geographical area within which a particular clearance operates.

IV. Growth of the Defendants

A. Paramount [1]

18. Famous Players-Lasky Corporation (now known as Paramount Pictures Inc.) was organized by Mr. Adolph Zukor (Chairman of the Board of Paramount Pictures Inc.) and Mr. Jesse L. Lasky and incorporated on July 19, 1916. The corporate name was changed to Paramount Famous Lasky Corporation on April 1, 1927 and on April 24, 1930 the name was changed to Paramount Publix Corporation.

19. In 1933 Paramount Publix Corporation was adjudicated a bankrupt in the United States District Court for the Southern District of New York. In June, 1935, it was reorganized under Section 77B of the Bankruptcy Act under the name of Paramount Pictures Inc.

20. Twelve producing companies were merged with Famous Players-Lasky Corporation in 1917. At the same time the company integrated production and distribution by acquiring a national distribution system through merger with Artcraft Pictures Corporation and Paramount Pictures Corporation. Thereafter the company from time to time acquired interests in other producing and distributing companies.

21. At the present time pictures are produced by the parent company, Paramount Pictures Inc., which is one of the principal producing companies in the industry. It maintains production facilities in Hollywood, California, and in New York and Long Island, New York. The following chart indicates Paramount's relative position in the

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[1] The term "Paramount," as hereinafter used, includes all subsidiaries of the parent corporation, Paramount Pictures Inc. The term "subsidiaries" as used throughout this complaint includes all corporations in which the parent owns directly or indirectly, a percentage of the voting stock sufficiently large to permit the exercise of substantial voting control, even though such percentage is less than 51% of the total voting stock.

[fol. 3148] industry with respect to pictures produced for the seasons mentioned.

Season	Features Produced in Industry	Features Produced by Paramount
1930-31	510	58
1931-32	490	56
1932-33	510	51
1933-34	480	55
1934-35	520	44
1935-36	517	50
1936-37	535	41
1937-38	450	40
1938-39	526	58

22. Paramount Pictures Inc. also produces approximately 45 shorts and 104 news reels each season.

23. Paramount pictures are distributed directly by it and also by its wholly owned subsidiary Paramount Film Distributing Corporation, through exchanges in 33 key cities. During 1936-37 season Paramount distributed 59 features, 18 more than it produced, and ordinarily distributes each season a substantial number of features produced by others for release by it.

24. In 1919 Paramount entered upon a program of theatre acquisition. In that year it acquired a stock interest in Southern Enterprises, Inc., which operated approximately 135 theatres in the South. In 1920 a stock interest was acquired in New England Theatres, Inc., which operated approximately 50 theatres in the New England states. About 1926, Paramount acquired a stock interest in the Butterfield Theatre Circuit, which operated approximately 70 theatres in Michigan. During the same year a stock interest was acquired in Balaban and Katz Corporation, which operated approximately 50 theatres in Illinois. Theatres were also subsequently acquired in the West and Middle West through the acquisition of various theatres and of stock interests in various corporations operating theatre circuits.

25. The number and location of theatres now operated by Paramount are approximately as follows:

[fol. 3149] (a) First-run Metropolitan Theatres:

City	No. of Theatres
Atlanta, Ga.	4
Boston, Mass	4
Brooklyn, N. Y.	1

City	No. of Theatres
Charlotte, N. C.	3
Chicago, Ill.	6
Dallas, Tex.	6
Des Moines, Ia.	4
Detroit, Mich.	5
Houston, Texas	3
Memphis, Tenn.	2
Minneapolis, Minn.	6
Newark, N. J.	1
New Haven, Conn.	1
New Orleans, La.	3
New York, N. Y.	1
Omaha, Neb.	3
Salt Lake City, Utah	6
St. Paul, Minn.	4
Total	63

(b) Other theatres operated by Paramount are approximately as follows:

State	No. of Theatres
Alabama	33
Arizona	8
Arkansas	47
California	4
Colorado	9
Connecticut	5
Florida	109
Georgia	34
Idaho	9
Illinois	116
Indiana	8
Iowa	60
Kentucky	11
Louisiana	17
Maine	39
Maryland	1
Massachusetts	78
Michigan	11
Minnesota	32

State	No. of Theatres
Mississippi	35
Missouri	1
Nebraska	11
New Hampshire	10
New Jersey	2
New Mexico	7
New York	24
North Carolina	66
North Dakota	10
Ohio	16
Oklahoma	6
Pennsylvania	72
Rhode Island	3
South Carolina	23
South Dakota	20
Tennessee	26
Texas	199
Utah	15
Vermont	8
Virginia	17
West Virginia	3
Wisconsin	5
Total	1,210

26. The parent corporation, Paramount Pictures, Inc., has gross assets of approximately $90,000,000. Its consolidated gross income was in excess of $100,000,000 for the fiscal year ended in 1939.

B. Loew's [1]

27. In about the year 1905, the late Marcus Loew (who before his death in 1927, was president of Loew's Incorpo- [fol. 3150] rated), in association with others, began to operate some so-called "penny arcades" in New York City and one in Cincinnati. Shortly thereafter, certain of these penny arcades were remodeled so as to permit, in part of the premises, the exhibition of single reel motion pictures, for which

[1] The term "Loew's," as hereinafter used, includes all subsidiaries of the parent corporation, Loew's, Incorporated.

an admission price of 5¢ was charged. In 1907 the enterprise acquired its first theatre. It was located in Brooklyn, New York, and was operated with vaudeville and single reel pictures.

28. The motion picture subjects were bought by Mr. Loew from various picture producers and exhibited in the Loew theatres; the custom was to buy one print of each subject. By the year 1910, Mr. Loew and his associates owned stock interests in a number of corporations operating store shows and theatres in New York and elsewhere, all of them showing vaudeville and short-subject pictures.

29. In 1910, Mr. Loew and his associates organized Loew's Consolidated Enterprises, which, in 1911, was succeeded by Loew's Theatrical Enterprises.

30. Between 1911 and 1919, Loew's Theatrical Enterprises, through subsidiary corporations, extended its activities in the operation of theatres devoted to motion pictures or a combination of vaudeville and motion pictures. Additional theatres were acquired in New York City and in certain cities other than New York. By 1919, Loew's Theatrical Enterprises had financial interests in approximately 56 theatres.

31. In October 1919, Loew's, Incorporated, was organized, and acquired all of the outstanding stock of Loew's Theatrical Enterprises. The extent of the theatre business of Loew's, Incorporated, has increased gradually since 1919.

32. The number and location of the theatres now operated by Loew's is approximately as follows:

[Fol. 3151] (a) Metropolitan First-run Theatres:

City	No. of Theatres
Atlanta, Ga.	1
Baltimore, Md.	1
Boston, Mass.	2
Brooklyn, N. Y.	1
Cleveland, Ohio	2
Denver, Colo.	1
Houston, Texas	1
Indianapolis, Ind.	1
Kansas City, Mo.	1

City	No. of Theatres
Memphis, Tenn.	1
Newark, N. J.	1
New Haven, Conn.	2
New Orleans, La.	1
New York, N. Y.	2
Pittsburgh, Pa.	1
St. Louis, Mo.	1
San Francisco, Calif.	1
Washington, D. C.	3
Total	24

(b) Other theatres are located as follows:

State	No. of Theatres
Connecticut	8
Delaware	1
District of Columbia	1
Indiana	2
Kentucky	1
Maryland	2
Massachuchetts	3
New York	64
New Jersey	2
Ohio	8
Pennsylvania	2
Rhode Island	1
Tennessee	1
Virginia	2
Total	98

33. In 1920, Loew's, Incorporated, entered the field of production and distribution of motion pictures by acquiring the outstanding stock of Metro Pictures Corporation. In 1924, Metro Pictures Corporation merged with Goldwyn Pictures Corporation under the name of Metro-Goldwyn-Pictures Corporation. The result of this merger was that Loew's, Incorporated, became the owner of all of the common stock of Metro-Goldwyn Pictures Corporation. At about the time of this merger, Louis B. Mayer Pictures,

Inc., contracted to supervise the production of all pictures produced by the merged company, and turned over to Metro-Goldwyn Pictures Corporation certain of the assets of Louis B. Mayer Pictures, Inc. The business of Metro-Goldwyn Pictures Corporation was subsequently assumed by Metro-Goldwyn-Mayer Corporation. On December 31, 1937, Metro-Goldwyn-Mayer Corporation ceased to do business and the production activities were taken over by Loew's, Incorporated.

[fol. 3152] 34. The following tabulation indicates the feature pictures produced by Loew's as compared with the total number of features produced, for the nine year period ending with the 1938-39 season:

Season	Features Produced in Industry	Features Produced by Loew's
1930-31	510	43
1931-32	490	40
1932-33	510	37
1933-34	480	44
1934-35	520	42
1935-36	517	43
1936-37	535	40
1937-38	450	41
1938-39	526	51

35. For the eight year period ending with the 1937-38 season, Loew's produced an average of 36 short subjects per year.

36. Loew's product is distributed through exchanges maintained by it in 31 key cities. During the 1936-37 season Loew's distributed 50 features, 10 more than it produced, and ordinarily distributes each season a substantial number of features produced by others for release by it.

37. The parent corporation, Loew's Incorporated, has gross assets of approximately $150,000,000. During the fiscal year ending in 1939, its gross income was in excess of $100,000,000.

C. Fox[1]

38. Twentieth Century-Fox Film Corporation was incorporated under the name of Fox Film Corporation on Feb-

[1] The term "Fox", as hereinafter used, includes all subsidiaries of Twentieth Century- Fox Film Corporation and of National Theatres Corporation.

ruary 1, 1915. Fox Film Corporation was voluntarily reorganized with the consent of its creditors, and security-holders in the summer of 1933. In August 1935, Fox Film Corporation acquired all the assets of Twentieth Century Pictures, Inc., a producing and distributing company, and the name of the company was changed to Twentieth Century-Fox Film Corporation.

[fol. 3153] 39. The following chart indicates the feature pictures produced by Fox as compared with the total number of features produced for the nine year period ending with the 1938-39 season:

Season	Features Produced in Industry	Features Produced by Fox
1930-31	510	48
1931-32	490	46
1932-33	510	41
1933-34	480	46
1934-35	520	40
1935-36	517	52
1936-37	535	52
1937-38	450	49
1938-39	526	56

40. Movietonews, Inc., a wholly owned Fox subsidiary, for the eight year period ending 1937-38, produced an average of 20 shorts and 104 news reels per year.

41. Fox product is distributed directly by Twentieth Century-Fox Film Corporation and Twentieth Century-Fox Distributing Corporation and Twentieth Century-Fox Corporation of Texas, wholly owned subsidiaries, through exchanges in 31 key cities. During the 1936-37 season Fox distributed 65 features, 13 more than it produced, and ordinarily distributes a substantial number of features produced by others for release by it.

42. In August 1925, Fox Film Corporation acquired approximately one-third of the common stock of West Coast Theatres, Inc., a company operating theatres in California and other western states; and, in March 1928, Fox Film Corporation purchased all the common stock of Wesco Corporation (now National Theatres Corporation), a holding company for theatre operating corporations.

43. In 1934, Wesco Corporation readjusted its capital structure by voluntary agreement among its creditors and stockholders, pursuant to which The Chase National Bank

of the City of New York acquired 58% of the stock of Wesco Corporation and Fox Film Corporation retained 42%. At about the same time the Chase Bank acquired a substantial stock interest in Fox Film Corporation and still owns a substantial interest in Twentieth Century-Fox Film Cor- [fol. 3154] poration. The name of Wesco Corporation was thereafter changed to National Theatres Corporation and the Chase Bank still retains 58% of the stock of National Theatres Corporation. National Theatres Corporation operates theatres in the middle and far western parts of the United States through numerous subsidiary operating corporations.

44. In 1937, Twentieth Century-Fox Film Corporation acquired all the common stock of Roxy Theatre, Inc., which owns the Roxy Theatre, a large first-run theatre in New York City.

45. The location and number of theatres now operated by Fox is approximately as follows:

(a) Metropolitan first-run theatres:

City	No. of Theatres
Denver, Colo.	4
Detroit, Mich.	1
Kansas City, Mo.	3
Los Angeles, Calif.	5
Milwaukee, Wis.	3
New York City	1
Portland, Ore.	4
San Francisco, Calif.	4
Seattle, Wash.	5
Total	30

(b) Other theatres are located as follows:

State	No. of Theatres
Arizona	7
California	196
Colorado	32
Idaho	9

State	No. of Theatres
Illinois	21
Iowa	6
Kansas	56
Michigan	5
Missouri	45
Montana	17
Nebraska	10
New Mexico	6
Oregon	9
Utah	2
Washington	23
Wisconsin	50
Wyoming	14
Total	308

46. Twentieth Century-Fox Film Corporation has gross assets of approximately $60,000,000. During the fiscal year ended in 1939, its consolidated gross income was approximately $50,000,000.

[fol. 3155] D. Warner [1]

47. Warner Bros. Pictures, Inc., was incorporated in 1923 for the purpose of producing, distributing, and exhibiting motion pictures. At that time, it owned and operated a motion picture studio in Hollywood, but had no theatres.

48. The Warner Company became interested in experimental work in the development of talking pictures, and, in August 1926, the first public performance of talking pictures was presented in the Warner Theatre in New York City.

49. Warner is one of the principal producing companies in the industry and maintains production facilities at Burbank and Hollywood, California, and Brooklyn, New York. The number of features produced by it as compared with the total number of features produced for the nine year

period ending with the 1938-39 season is indicated by the following tabulation:

Season	Features Produced in Industry	Features Produced by Warner
1930-31	510	69
1931-32	490	56
1932-33	510	53
1933-34	480	63
1934-35	520	51
1935-36	517	58
1936-37	535	58
1937-38	450	52
1938-39	526	54

50. During the eight year period ending 1937-38 Warner produced an average of 102 short subjects per year.

51. In 1925 Warner Pictures, Inc. acquired Vitagraph, Inc., which operated 34 exchanges in the principal cities of the United States and Canada, and two other affiliated companies which operated exchanges in foreign countries. Warner products distributed through Vitagraph, Inc. During the 1936-37 season Vitagraph distributed 60 features, 2 more than it produced, and ordinarily distributes some features each season produced by others for release by it.

[fol. 3156] 52. Warner Bros. Pictures, Inc., entered the exhibition field in December 1924, when it acquired a theatre in Youngstown, Ohio. In 1925, it acquired 13 additional theatres in various parts of the United States. In December 1928, the corporation acquired a majority of the stock of Stanley Company of America, which operated, directly or through subsidiaries, 182 theatres and had partial stock interests in theatre companies that owned or leased 51 theatres. The theatres of the Stanley Company of America were located in the Middle Atlantic States and the District of Columbia.

53. Subsequently, the company acquired interests in theatres in Missouri, Pennsylvania, Maryland, New Jersey, Ohio, Connecticut, New York, Illinois, Wisconsin, Virginia, and Kentucky.

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[1] The term "Warner", as hereinafter used, includes all subsidiaries of the parent corporation, Warner Bros. Pictures, Inc.

54. The approximate number and locations of theatres now operated by Warner are as follows:

(a) Metropolitan first-run theatres:

City	No. of Theatres
Albany, N. Y.	2
Baltimore, Md.	1
Brooklyn, N. Y.	1
Charlotte, N. C.	1
Cleveland, Ohio	2
Los Angeles, Calif.	2
Memphis, Tenn.	1
Milwaukee, Wis.	1
Newark, N. J.	2
New Haven, Conn.	1
New York, N. Y.	2
Oklahoma City, Okla.	7
Philadelphia, Pa.	8
Pittsburgh, Pa.	2
Washington, D. C.	2
Total	35

(b) Other theatres are located as follows:

State	No. of Theatres
California	10
Connecticut	34
Delaware	6
District of Columbia	14
Illinois	19
Indiana	3
Kentucky	8
Maryland	7
Massachusetts	16
New Jersey	90
New York	44
Ohio	36
Oklahoma	7
Oregon	2
Pennsylvania	185

State	No. of Theatres
Virginia	9
Washington	3
West Virginia	11
Wisconsin	18
Total	522

55. Warner Bros. Pictures, Inc. has gross assets of approximately $150,000,000. During the fiscal ended 1939 its gross income exceeded $100,000,000.

[fol. 3157] E. RKO [1]

56. Radio-Keith-Orpheum Corporation was incorporated under the laws of the State of Maryland on October 25, 1928. Since its incorporation it has been primarily a holding company for subsidiaries engaged in the production, distribution, and exhibition of motion pictures. Shortly after after its organization, Radio-Keith-Orpheum Corporation secured control of its principal exhibition and production companies, Keith-Albee-Orpheum Corporation and FBO Production, Inc., respectively.

57. Organized on January 28, 1928, as a Delaware corporation, Keith-Albee-Orpheum Corporation acquired, in February of the same year, all of the outstanding stock of B. F. Keith Corporation and approximately 90% of the outstanding stock of Orpheum Circuit, Inc. Subsidiaries of B. F. Keith Corporation owned and operated in various cities in the eastern part of the United States a large number of theatres which, although originally devoted to the performance of vaudeville, were converted and used for the exhibition of motion pictures. Orpheum Circuit, Inc., directly or through subsidiaries, operated theatres throughout the Midwest and Western parts of the United States.

58. In addition to Keith-Albee-Orpheum Corporation and Orpheum Circuit, Inc., Radio-Keith-Orpheum Corporation obtained the controlling interest in numerous other companies engaged in the motion picture exhibition business, the most important being RKO Proctor Corporation and RKO Midwest Corporation. RKO Proctor Corporation

[1] The term "RKO", as hereinafter used, included all subsidiaries of Radio-Keith-Orpheum Corporation and Keith-Albee-Orpheum Corporation.

operated the Proctor circuit of theatres located in the New York metropolitan district and in up-state New York. RKO Midwest Corporation controlled a group of theatres in Ohio and Michigan.

59. The number and location of theatres now operated by RKO is approximately as follows:

[fol. 3158] (a) Metropolitan first-run theatres:

City	No. of Theatres
Albany, N. Y.	2
Boston, Mass.	2
Brooklyn, N. Y.	2
Chicago, Ill.	1
Cincinnati, Ohio	6
Cleveland, Ohio	2
Denver, Colo.	1
Des Moines, Iowa	1
Los Angeles, Calif.	2
Minneapolis, Minn.	1
Newark, N. J.	2
New Orleans, La.	1
New York, N. Y.	1
Omaha, Neb.	1
San Francisco, Calif.	1
St. Paul, Minn.	2
Washington, D. C.	1
Total	29

(b) Other theatres are located as follows:

State	No. of Theatres
California	1
Illinois	2
Iowa	5
Massachusetts	3
Michigan	7
New York	53
New Jersey	14
Ohio	13
Rhode Island	2
West Virginia	3
Total	103

60. The name of FBO Production Productions, Inc., the principal producing company absorbed by Radio-Keith-Orpheum Corporation, was ultimately changed to RKO Radio Pictures, Inc., RKO maintains production facilities in Hollywood and Culver City, California.

61. The number of features produced by RKO during the nine year period ending 1938-39 as compared with the total number of feature pictures produced during that period is indicated by the following chart:

Season	Features Produced in Industry	Features Produced by RKO
1930-31	510	32
1931-32	490	48
1932-33	510	45
1933-34	480	40
1934-35	520	40
1935-36	517	43
1936-37	535	39
1937-38	450	41
1938-39	526	49

62. In January 1931, Radio-Keith-Orpheum Corporation took over, through subsidiaries, the news reel and other production business and facilities of Pathe Exchange, Inc.

63. For the eight-year period ending 1937-38 RKO Radio Pictures, Inc. produced an average of 33 short subjects per [fol. 3159] year and the Van Beuren Corporation, a wholly owned subsidiary, produced an average of 48 short subjects per year. During the same period Pathe News, Inc., a wholly owned subsidiary, produced an average of 10 short subjects and 104 news reels per year.

64. RKO product is distributed by RKO Radio Pictures, Inc. through its exchanges located in 32 cities. During the 1936-37 season RKO distributed 47 features, 8 more than it produced, and ordinarily distributes a substantial number of features produced by others for release by it.

65. On January 27, 1933, Radio-Keith-Orpheum Corporation went into an equity receivership and Irving Trust Company was appointed Receiver. On June 8, 1934, Radio-Keith-Orpheum Corporation filed a petition for reorganization under Section 77B of the Bankruptcy Act in the United States District Court for the Southern District of New York. Irving Trust Company was appointed Trustee in reorganization. A plan of reorganization was approved January 17, 1939, confirmed April 11, 1939, and

such approval and confirmation were affirmed by the Circuit Court of Appeals for the Second Circuit on September 8, 1939.

66. The parent corporation has gross assets of approximately $70,000,000. During the fiscal year ended in 1939 its consolidated gross income was about $40,000,000.

F. Columbia [1]

67. Columbia Pictures Corporation was incorporated in the State of New York on January 10, 1924. Its organizers and, at that time, sole stockholders were Joe Brandt, Harry Cohn, and Jack Cohn. Commencing on February 4, 1925, with the acquisition of the assets of C.B.C. Film Sales Corporation, Columbia Pictures Corporation bought up exchanges throughout the country for the marketing of its product. By 1929, its distribution system was organized upon a national scale. In 1930, it secured exchanges for the foreign distribution of its film.

[fol. 3160] 68. During 1928, Columbia acquired, through merger, Screen Shapshots, Inc., Hall Room Boys Photoplays, Inc., Starland Revue, Inc., all producers of short subjects, and in 1931 secured 50% and, in 1937, the remaining 50% of the capital stock of Screen Gems, Inc., also a producer of short subjects.

69. The following chart shows the number of features produced by Columbia, as compared with the total number of features produced during the nine-year period ending with the 1938-39 season:

Season	Features Produced in Industry	Features Produced by Columbia
1930-31	510	27
1931-32	490	31
1932-33	510	36
1933-34	480	44
1934-35	520	39
1935-36	517	36
1936-37	535	38
1937-38	450	39
1938-39	526	54

[1] The term "Columbia", as hereinafter used, includes all subsidiaries of the parent corporation, Columbia Pictures Corporation.

70. During the eight year period ending 1937-38, Columbia Pictures Corporation, produced an average of 39 short subjects and Screen Gems, Inc., produced an average of 22 short subjects per year.

71. Columbia product is distributed through its 32 exchanges located in key cities. During the 1936-37 season Columbia distributed 51 features, 13 more than it produced, and ordinarily distributes a substantial number of features produced by others for release by it.

72. The parent corporation has gross assets of approximately $15,000,000. During the fiscal year ended in 1939 its gross income was about $20,000,000.

G. Universal[1]

73. Universal Pictures Corporation, formerly Universal Film Manufacturing Company, was incorporated in New York, in 1912, and with its subsidiaries, engaged in the production and distribution of motion pictures in the United States and throughout the world.

[fol. 3161] 74. Universal Pictures Company, Inc., was formed on January 10, 1925, and at approximately the same time purchased the entire outstanding capital stock of Universal Pictures Corporation. From 1925 to 1936, Universal Pictures Corporation was the production branch of its parent company, Universal Pictures Company, Inc. During such period, motion pictures produced by Universal Pictures Corporation were distributed by Universal Film Exchanges, Inc. and the Big U Film Exchange, Inc.

75. In April 1936, Universal Corporation was organized for the chief purpose of acquiring the controlling stock interest of Carl Laemmle and his associates in Universal Pictures Company, Inc., a producer, and Big U Film Ex-Exchange, a distributor of motion pictures.

76. The number of features produced by Universal, as compared with the total number of features produced dur-

[1] The term "Universal", as hereinafter used, includes all subsidiaries of the parent corporation, Universal Corporation.

ing the nine-year period ending 1938-39, is indicated by the following tabulation:

Season	Features Produced by Industry	Features Produced by Universal
1930-31	510	22
1931-32	490	32
1932-33	510	28
1933-34	480	38
1934-35	520	39
1935-36	517	27
1936-37	535	40
1937-38	450	45
1938-39	526	45

77. For the eight year period ending with the 1937-38 season, Universal produced an average of 111 short subjects and 104 news reels per year. During the 1936-37 season, Universal distributed 40 features; no more than it produced, but it ordinarily distributes each season some features produced by others for release by it.

78. In January 1926 Universal Pictures Corporation and its president, Carl Laemmle, secured a substantial stock interest in Universal Chain Theatres Corporation, which, through subsidiaries and affiliated companies, operated a [fol. 3162] large number of theatres. In 1928, Universal Chain Theatres Corporation and its affiliates operated about 315 theatres in Canada, the District of Columbia, and 20 States of the United States, including the Griffith Amusement Company circuit of 40 theatres in Oklahoma and Texas, and the Schine chain of 90 theatres in New York and Ohio. A substantial number of its theatres were disposed of between 1929 and 1931. It went into receivership in 1933, and its remaining theatres were sold by the receiver.

79. The dissolution of Universal Pictures Corporation in December 1936, was accompanied by a transfer of its assets to Universal Pictures Company, Inc. Since January 1, 1937, Universal Pictures Company, Inc., has been engaged in the production of motion pictures which are distributed in the United States by Big U Film Exchange, Inc., and Universal Film Exchanges, Inc.

80. Universal Pictures Company, Inc., has gross assets of approximately $12,000,000. During the fiscal year ended in 1939, its gross income was about $20,000,000.

H. United Artists [1]

81. United Artists Corporation was organized in 1919, by a group of individuals who had achieved prominence in the production branch of the motion picture industry. The purpose of the corporation was to distribute the features produced by its organizers.

82. Most of the features distributed by United Artists Corporation have been first-class features, although as a general rule it does not release as many pictures per year as the other major companies.

83. The following tabulation indicates the number of United Artists releases as compared with the total number of features produced during the nine year period ending 1938-39:

[fol. 3163]

Season	Features Produced in Industry	Features Released by United Artists
1930-31	510	13
1931-32	490	14
1932-33	510	16
1933-34	480	20
1934-35	520	19
1935-36	517	17
1936-37	535	19
1937-38	450	16
1938-39	526	18

84. United Artists now distributes pictures for the following producers among others: Samuel Goldwyn, Charles Chaplin, Mary Pickford, Alexander Korda, and London Film Productions, Ltd., Selznick International, Edward Small, Sol Lesser, Hal Roach, David Loew, Ernest Lubitsch, Walter Wanger, and Richard Rowland.

85. United Artists maintains exchanges in 26 cities.

86. The corporation is owned by five stockholders, Charles Chaplin, Samuel Goldwyn, Mary Pickford, the Estate of Douglas Fairbanks and Alexander Korda. It issues no public statement of gross assets or business done but for the fiscal year ended in 1939 its gross income exceeded $10,000,000.

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[1] The term "United Artists", as hereinafter used, refers to the defendant, United Artists Corporation.

I. Joint Theatre Interests

87. Each of the producer-exhibitor defendants is jointly interested financially in one or more theatres with one or more of the other producer-exhibitor defendants, through profit sharing arrangements with respect to particular theatres; through so-called pools where several theatres owned or controlled by two or more are operated as a unit; through direct or indirect ownership of stock in a single theatre operating corporation by two or more of such defendants; or through arrangements where one owns or leases a theatre and the other manages it. Such joint interests include all of the following combinations with respect to one or more theatres: Fox with Loew's, Fox with Paramount, Fox with RKO, Fox with Warner, Loew's with Paramount, Loew's with RKO, Loew's with Warner, Paramount with RKO, Paramount with Warner and RKO with Warner. [fol. 3164]. 88. There are about 200 theatres in the United States in which such joint interests are held, including a substantial number of metropolitan first-run theatres.

89. In addition to the foregoing joint theatre interests of the producer-exhibitor defendants with each other there are numerous other joint theatre interests where executive employees, or managing agents of one producer-exhibitor defendant have direct or indirect stock interests in a theatre operating corporation in which another producer-exhibitor defendant also owns a direct or indirect stock interest.

V. Competitive Conditions in the Motion Picture Industry

A. Limited Source of Supply of Features and Particularly First Class Features

90. In the early stages of motion picture production films possessed entertainment value for the public merely because of the novelty of watching figures and objects in motion projected on a screen. They were priced by the foot or by the reel without regard to their quality as dramatic productions. As the novelty wore off, it became increasingly necessary to produce films which had stories of dramatic interest, employed well-known acting talent and eliminated technical faults in photography and projection.

91. By 1908 there were ten well established companies in the United States which were either producing or im-

porting motion picture films and selling them to independent exchanges scattered throughout the country, but operated on a local basis. From these exchanges films were distributed weekly to exhibitors for a rental based on footage, although some attempts had been made to produce and market individually features of distinctive quality. At that time there were between 125 and 150 exchanges and 6,000 exhibitors in the United States.

[fol. 3165] 92. In 1908, largely to escape the effects of a patent war conducted chiefly by the Edison companies, which held basic camera and projection equipment patents, the ten leading manufacturers decided to pool their interests and patents in the Motion Picture Patents Company. These companies were: Biograph, Kalem, and Pathe, in New York; Vitagraph in Brooklyn, Edison in New Jersey; Lubin in Philadelphia; and Essanay, Kleine, Meli and Selig in Chicago.

93. Each manufacturer took a license from the Patents Company entitling it to produce and lease motion pictures. By a system of licenses extending to distribution and exhibition, control of the entire industry was attempted. The licenses generally covered all branches of the industry, including cameras, film, and projectors.

94. The General Film Company was then organized to distribute the films of the ten producers on a national scale. Exchanges were either established by it or existing exchanges bought out. Other distributors had to secure the films of other producers in order to continue their business.

95. The Patents Company and the General Film Company were met by a militant group of producers, distributors, and exhibitors who operated without their licenses. And a number of law suits followed. Private suits for damages under the antitrust laws were instituted by them, and finally the Government instituted a suit in equity in 1912 which brought about the dissolution of the Motion Picture Patents Company by a decree dated January 24, 1916.

96. Meanwhile, the art of producing motion pictures had been going forward. The standardized film of one reel of 1,000 feet was rapidly displaced after 1912 by the feature picture of five reels or more. While the Motion Picture Patents Company adhered to the idea of short, standardized

films of one reel and a daily change of program to be sold on a footage basis, others who had made a careful study [fol. 3166] of audience reaction were convinced that the time had arrived for further advances in production. Complete stories, plays, and books were translated into motion pictures. Among the early advocates of this change was Adolph Zukor, who formed the Famous Players Company in 1912, and produced "Queen Elizabeth," in which Sarah Bernhardt appeared, and soon "The Prisoner of Zenda," with James K. Hackett, a well-known actor, was produced.

97. From a position of comparative obscurity in 1912, Adolph Zukor and his Famous Players Company by 1916 had become the dominating influence in the industry. The feature pictures of this company were in demand the country over and were recognized generally as the best pictures on the market. A national distribution system had been secured through the acquisition of the control in that year of Paramount Pictures Corporation, which had been organized two years before by William W. Hodkinson, a San Francisco distributor.

98. The cost of making pictures had mounted abruptly, due principally to the rise in salaries of stars, directors, and technicians of all kinds. Then these costs were passed on to the distributors and exhibitors, who had largely remained independent of producers, great alarm was felt by the persons engaged in these two branches of the industry, and resulted, in 1917, in the organization of First National Exhibitors Circuit, an association of exhibitors, which, through production and distribution units financed by its membership under a system of franchises, sought to assure its membership of a constant, satisfactory supply of pictures.

99. Many of the theatres in the new association were and had been customers of Famous Players. Thus the market for the pictures of that company was being threatened, and soon stars, feature players, directors and other personnel, were leaving the employ of Famous Players-Lasky for that of First National Exhibitors Circuit.

[fol. 3167] 100. In 1919 Famous Players-Lasky Company began its acquisition of theatres as hereinbefore recited. By 1930, as hereinbefore recited, five of the major companies, Paramount, Loew's, Warner, Fox and RKO, had all devel-

oped nationwide businesses, in which production, distribution and exhibition were integrated. During the interim feature production costs had mounted steadily and the returns from their exhibition kept pace. This trend was accelerated in 1927 by the introduction of commercially profitable sound films which required costly equipment to produce, with the result that by 1930 the best features produced by each of these companies were costing as much as $500,000 or more each to produce.

101. By 1930 the eight defendant distributors were releasing substantially all of the features produced in the United States at a cost of more than $250,000 as they were the only ones which had the national distribution systems and established first-run outlets necessary to make the production of such features profitable. Since that date, they have continued to maintain complete control of the distribution of such features, although many of them have been produced by producers not employed by a major company but pursuant to arrangements made preceding the production of such films for release by a major distributor. Such arrangements generally included the use of equipment owned by, or production talent under contract to, one or more of the defendants. These arrangements have often included financing of the production directly by the major distributor involved or the borrowing of capital by the producer upon its showing that it has been assured of release through a major distributor. Ordinarily, no funds have been or are available for this type of production in the absence of such an assurance.

[fol. 3168] 102. As the equipment and technical and artistic talent necessary to produce profitable features became more costly, competition for the use of such talent became even more costly to producers; and since 1930 the major producers have preferred to loan and exchange the highest priced technical and artistic talent which they may have under exclusive contract to and with each other on standardized terms rather than drive the price of such talent higher by competing for the privilege of placing it under contract in the first instance.

103. The producer-exhibitor defendants have an additional inc tive to pool their production resources arising out of th act that each owns theatres which share the profits of s cessful features released by any of the others.

Ordinarily, the major producers make available to each other their stars, feature players, directors and other personnel and their sets, scenery, and other technical equipment necessary for the production of motion pictures while they do not readily make them available to independent producers. Even where such talent has been made available to independent producers, the terms have frequently been discriminatory as compared to the terms upon which it has been made available to major producers.

104. Since 1933 the number of instances in which stars, feature players, directors, writers, cameramen or other production talent under contract to a defendant has been loaned to another major producer as compared with loans to independent producers during the same period are approximately as follows:

	Number of Loans by Defendants	
Defendant	To Major Producers	To Independent Producers
Loew's	610	56
Paramount	439	46
Warner	223	12
RKO	109	12
Fox	251	7
Columbia	175	36
Universal	198	11

[fol. 3169] 105. Fox, Loew's, Paramount, RKO and Warner have collectively received during the past five years approximately 70 per cent of the total film rentals received by all distributors of motion pictures from exhibition in the United States, and Columbia, United Artists and Universal received about 25 per cent of such total film rentals. Fox, Loew's, Paramount, RKO and Warner have during each of said years collectively released about 80 per cent of all first class features, and Columbia, United Artists and Universal have during each of said years released about 15 per cent of all first-class features. The first-class features represent those which have generally cost the most money to produce, have received the most intensive exploitation by distributors, have been successful in attracting patrons to theatres, and have yielded the largest gross box-office returns to exhibitors. No other distributor has released more than 1 per cent of such features during any of said years and in no year have all other distributors combined released more than 5 per cent of such features.

B. Block Booking and Blind Selling in Long Term Contracts

106. In the early stages of motion picture distribution, the uniform quality of films and dependence by exhibitors on their novelty, rather than quality, to attract audiences, was well adapted to the method of licensing still employed in the industry. Then as now films were licensed sight unseen in large groups for delivery at weekly intervals over a period of a year or more.

107. License contracts today ordinarily contain the terms on which a group of features are to be exhibited over a period of at least one year. With the exception of United Artists, which usually makes a separate contract for the films released by each of its producers, the distributors cover in one license contract all of the features released during the one-year period or a lesser number to be selected from all released, as and when released. The licenses are [fol. 3170] generally negotiated prior to the commencement of each motion picture season before any of the features covered have been released. The exhibitor has no knowledge of the quality or character of the features he licenses other than data concerning the stories, directors, stars, and featured players, supplied as to some pictures by some of the distributors in prospectuses of the coming season's production program and the exhibitor's past experiences with similar productions. Such production programs are always subject to change without notice to any exhibitor and his license contract offers no protection against loss which may result from the failure of the pictures produced to live up to the claims made for them as box-office attractions at the time they are sold.

108. The quality of feature pictures, as box-office attractions, varies widely even with respect to those released by the same company and they are accordingly priced in various brackets in the license agreement in accordance with anticipated quality. The feature released by any of the defendant distributors during any one season which is the most successful in attracting theatre audiences will ordinarily gross more than $1,000,000 in film rental and play in more than 10,000 theatres, in the United States, while the least successful feature will ordinarily gross less than $200,000 in film rental and play in less than 5,000 theatres, in

the United States. The features assigned to the top price bracket in license agreements ordinarily have rental terms based upon a percentage of the box-office receipts, sometimes against a guaranteed figure, and those in the lowest price brackets are ordinarily licensed for a flat rental. The pictures in each bracket are usually untitled and unidentified.[1] The result is that most features are not definitely allocated to a price bracket until after their release and [fol. 3171] the question of proper allocation is a continuous source of dispute between exhibitors and distributors.

109. Each distributor defendant releases each year a certain number of features (generally those in the lowest price bracket) which most exhibitors do not wish to exhibit at all. Therefore, in negotiating licenses, the distributor attempts to secure a commitment by the exhibitor to play all of the features released by it during the one-year period with as small a cancellation or rejection privilege as possible and the exhibitor attempts to limit his commitment by either obtaining as wide a rejection or cancellation privilege as possible or sometimes by licensing a specific number of features, less than all released during such period. The extent to which the exhibitor is able to limit his commitments to those features which he thinks he can profitably exhibit depends upon the relative bargaining strength of the parties. In view of the limited supply of profitable features, a defendant distributor, in dealing with small independent exhibitors with limited buying power, is ordinarily able to compel the exhibitor to commit himself to play many features which he does not want and cannot profitably exhibit as a condition of licensing other features which he does want and can profitably exhibit. To the extent that such commitments are made, the market for films of other distributors which the exhibitor wants to play is correspondingly limited, and one result of the tying of unprofitable features to profitable features in the license contracts of the major distributors has been to prevent or discourage the entry into the market of independent producers and distributors. Another result of such block booking has been to encourage the production of features by the major com-

[1] An example of such bracketing is as follows; Four features at 35%; six at 30%; ten at 25%; ten at $200.00 flat rental; and ten at $100.00 flat rental.

panies which are not sufficiently attractive to be sold on their own merits but which may be successfully marketed by block booking them with other features of superior quality.

[fol. 3172] 110. While the restrictive effect of such block booking is substantially lessened in the case of United Artists by the employment of separate license agreements for each of its producers, most of which produce no more than four pictures a year, this defendant generally negotiates the licenses for all of its producers' pictures with the same exhibitor at the same time and sometimes conditions the sale of one producer's pictures upon the purchase by the exhibitor of the pictures of another producer which he does not desire to use.

111. In addition to the rental to be paid, the license contracts also ordinarily specify the run on which the features are available to the exhibitor, the clearance, if any, which his theatre shall have over competing theatres, and usually specify the minimum (adult and children, matinee and evening) admission prices to be charged by his theatre when exhibiting such features.

C. Run, Clearance, and Minimum Admission Prices

112. Although the entertainment value of the feature pictures released in the United States from week to week varies widely, theatre admission prices are generally uniform at a particular theatre regardless of the quality of the particular feature exhibited. Under the prevailing system of licensing features for a particular run for periods of a year or more with clearance at a specified minimum admission price, each theatre ordinarily plays all of the feature pictures it exhibits on the same run with the same clearance. All theatres which play features on the same run in the same competitive area ordinarily play them at the same admission price regardless of changing competitive conditions which might otherwise affect admission prices during the period of the license.

113. The incorporation of the foregoing provisions with respect to run, clearance and admission prices in annual licensing agreements and franchises, has tended to stabilize the playing positions and operating policies of particular theatres from year to year and the negotiation of license [fol. 3173] contracts with subsequent-run exhibitors is

always subject to whatever rights have been established by license agreements with the prior-run exhibitors. Even where there are two or more theatres in a position to compete for the privilege of exhibiting the same features upon the same run, negotiations are seldom conducted simultaneously with the competing exhibitors for the licensing of pictures on such run. The distributor ordinarily negotiates the rental terms to be paid without any competitive bidding and only if an agreement is not reached with the exhibitor with whom negotiations for a certain run are started are negotiations undertaken with a competing exhibitor for that run.

114. In the very early years of the motion picture industry the age of films was not a significant factor. As films acquired plot content and as certain players became known to the motion picture public, however, it became important to exhibitors to show them as early as possible after release. Prior to the advent of the feature picture, films were licensed generally on the basis of age, with the license fee becoming smaller as the reel grew older. There was evolved during this period the concept of "run" which eventually displaced the earlier method of licensing pictures and instead of licensing pictures one week old, two weeks old, etc., exhibitors licensed product on first run in a given territory, on second run in said territory a specified period of time after first run, on third run in said territory a specified period of time after second run, etc. As the form of the motion picture developed from single reel to the feature picture and as certain players attained great popularity, motion picture theatres were able to command higher admission prices, and the operation of deluxe first-run theatres in large cities charging a high admission price became feasible and profitable. From about 1915 or 1916, when the first of these deluxe theatres, designed primarily [fol. 3174] for motion picture exhibition at advanced admission prices, were constructed, exhibitors operating such theatres sought to obtain and frequently did obtain long periods of protection over all other theatres in the city and surrounding territory where they were located.

115. From about 1915 to about 1931 it was frankly conceded by distributors and exhibitors generally that uniform runs and clearances were desirable, even though arrived at as the result of agreement between distributors, and many

efforts were made to eliminate differences in the run and protection terms on which distributors dealt with theatres. During this period a number of contracts and franchise agreements provided in effect that the run and protection terms therein granted by a given distributor were to be the same as those granted to the theatre or theatres involved by other distributors.

116. In about 1930, after the producer-exhibitor defendants had substantially completed their theatre acquisition programs, they made a concerted effort to establish uniform zoning and protection plans throughout the United States through the Film Boards of Trade.[1] It was the purpose of those plans to establish in each exhibition territory a uniform plan of zoning and protection which would give a definite status to each theatre in the territory and which would prevent any distributor from dealing with such theatre with respect to run, zoning, or protection, on any terms other than those provided for in the plan. Such uniform zoning and protection plans, through agreements of the exhibitors and the distributors, were adopted for the 1930-31 season for the following cities: Charlotte, North Carolina; Detroit, Michigan; Los Angeles, California; [fol. 3175] Omaha, Nebraska; Salt Lake City, Utah; Denver, Colorado; Kansas City, Missouri; Milwaukee, Wisconsin; St. Louis, Missouri; San Francisco, California. There were also proposed and recommended by the local committees of the exhibitors and distributors and were awaiting acceptance by the home offices of the distributors in New York City, uniform zoning and protection plans for the 1930-31 season for the following cities: Albany, New York; Cincinnati, Ohio; New Orleans, Louisiana; Philadelphia, Pennsylvania; Buffalo, New York; Memphis, Tennessee; Oklahoma City, Oklahoma; and Washington, D. C. There were also under consideration for the 1930-31 season, by local committees, uniform zoning and protection plans for the following cities: Atlanta, Georgia; Chicago, Illinois; Des Moines, Iowa; Minneapolis, and St. Paul, Minnesota; New York, New York; Portland, Oregon; Boston, Massachusetts; Cleveland, Ohio; Indianapolis, Indiana; New Haven, Con-

[1] Trade practice enforcement bodies located in each city where the defendants maintained exchanges.

necticut; Pittsburgh, Pennsylvania; and Seattle, Washington.

117. In 1932 the United States District Court for the District of Nebraska [1] held that the Uniform Zoning and Protection Plan for the Omaha Distribution Territory was an agreement between distributors which restrained trade in violation of the Sherman Act. After the illegality of these uniform zoning and protection plans became apparent in 1932, the distributors, refrained from employing any express agreements with each other with respect to uniform protection and zoning.

118. Another concerted effort was made to establish uniform zoning and protection plans under the code of the motion picture industry adopted pursuant to the National Industrial Recovery Act in December 1933. From that time until May 1935, when that Act was invalidated by the Supreme Court, efforts were made by local clearance and zoning committees throughout the country to establish uni- [fol. 3176] form clearance and zoning plans. (It was at about this time that the term "clearance" was substituted in the industry for the term "protection" which had been used prior thereto.) Such a plan was actually arrived at in Los Angeles, California, and a modification of that plan is still in effect in that territory. Although such plans were under consideration in numerous other territories, the invalidation of the National Industrial Recovery Act prevented those plans from going into effect. Since May 1935, the industry has made no open effort to establish uniform clearance and zoning by express agreements between distributors.

119. Notwithstanding the disavowal by distributors of agreements between themselves with respect to uniform clearance and zoning schedules, such schedules are actually in effect in every exhibition territory in the United States. Many of these schedules were arrived at by agreement before 1932 and have been carried forward since that time as a matter of tacit understanding and custom. Other uniform clearance and zoning schedules have developed as a result of pressure uniformly exerted by the dominant exhibitor in

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[1] *Youngclaus* v. *Omaha Film Board of Trade*, 60 F. (2d) 538.

a zone upon all of the distributors. The dominant circuits in every exhibition area, whether they be affiliated or unaffiliated, in purchasing product generally request and secure the same runs and the same protections from all distributors with whom they deal and such terms are incorporated in express agreements with each such distributor. The result is a uniform system or plan of clearance which is embodied in a series of similar clearance schedules agreed to by the dominant exhibitors with each distributor rather than a single schedule.

120. Each distributor knows the run and clearance [fol. 3177] granted by every other distributor licensing the same theatres and knows that the effect of such uniformity is to freeze the playing positions and admission prices of all theatres in an area where such uniform schedules prevail.

D. Long Term Franchises

121. Generally, distributors enter into license agreements with exhibitors every season and most license agreements cover only a single season's output of pictures. In their dealings with circuits, however, both affiliated and unaffiliated, the distributors engage in the practice of entering into long-term franchises. These franchises are for periods varying from two years to twenty years, and they cover the exhibition of pictures released by a distributor during their term in the theatres of the circuits with which they are made. The amount of film rentals involved in a single franchise has sometimes exceeded two million dollars and a single franchise has sometimes covered the terms of exhibition in more than five hundred theatres in widely separated localities.

122. Long-term franchises are generally advantageous to the circuits with which they are made. By virtue of the fact that the circuits have large buying power and pay to the distributors large sums of money, these franchises often discriminate against independent theatres whose buying power is small. These franchises generally give to the circuit theatres a selective choice of pictures and, regardless of changes in circumstances that may take place during the term of such a franchise, the circuit is permitted to tie up all the pictures or a substantial portion of the pictures released by the distributor while it is obligated to take only

a selection of said pictures. By establishing the runs and protections with respect to all the theatres in the circuit, these franchises deny to other theatres, during their term, the opportunity to bid for or to license the runs of pictures covered by such a franchise in competition with the circuit [fol. 3178] theatres. Another effect of these long-term franchises is that they restrict the market for films independently produced and released. Many of these franchises do not contain all the terms and conditions pursuant to which pictures are licensed, but are simply agreements to enter into binding licenses at some future time.

123. Franchises generally provide for the exhibition of pictures in all of the theatres operated by the circuit involved, and some of them have even provided that additional theatres acquired by the circuit during the term of the franchise are to be included within its terms. Some of these franchises also provide that where a circuit has not exhibited all the pictures licensed in certain theatres, it may make up for this deficiency by exhibiting in other theatres more pictures than have been licensed for exhibition in such theatres. This practice is known as overage and underage. These franchises also confer advantages upon certain theatres by providing for reductions in film rentals where vaudeville performances are given and where double feature programs are used and also by providing that in certain situations advertising costs are to be paid by the distributor or shared between the distributor and the exhibitor. Rental terms in such franchises are frequently calculated in accordance with formulae which are based upon the net profits to the exhibitor, rather than gross receipts, from the exhibition of the feature picture involved and are in effect profit sharing agreements.

E. Circuit Discrimination

124. In licensing films to an exhibitor who owns or controls a number of theatres, such as a large circuit, the terms with respect to all of the circuit theatres are generally negotiated at the same time regardless of how many theatres there are in the circuit or where they are located. The exhibitor in negotiating such terms attempts to secure the [fol. 3179] most favorable terms for all of his theatres and in so doing frequently conditions the granting of certain terms in one theatre situation which he controls upon the

granting of certain terms in another unrelated theatre situation which he also controls. In negotiating terms for such a circuit, the distributor sometimes conditions the use of its films in certain competitive situations where the circuit needs the distributor's films upon the acceptance by the circuit of films which the circuit does not need in other competitive situations. The result is that an independent exhibitor, operating a single theatre in competition with a circuit is unable to compete for the privilege of licensing the distributor's films on the basis of what his theatre can offer as against the circuit theatre in immediate competition with him, but is frequently excluded from any consideration as a prior-run outlet for the distributor's films because of competitive conditions existing in an entirely different exhibition situation, over which the independent exhibitor has no control.

125. In licensing films to an affiliated circuit, the same procedure is followed as with respect to any other circuit except that the factor of affiliation introduces into the negotiations an inducement to discriminate in favor of affiliated theatres at the expense of unaffiliated theatres. A producer-exhibitor defendant, in negotiating for the licensing of films released by it for exhibition in theatres owned and controlled by another producer-exhibitor defendant, must take into consideration the terms demanded by the other producer-exhibitor in licensing its films for exhibition in theatres owned or controlled by such first producer-exhibitor. The granting of certain terms and privileges with respect to the exhibition of one producer-exhibitor defendant's films in another producer-exhibitor defendant's circuit is necessarily conditioned upon the granting of similar terms and [fol. 3180] privileges by the latter with respect to the exhibition of its films in the circuit of the former.

F. Control Over Exhibition Exercised by First-Run Exhibitors

126. A number of prints of each feature, depending on the number of theatres to be served, are delivered to each exchange prior to national release date and delivered by the exchange to the various theatres which have licensed the film in accordance with the priority established by their contracts and returned to the exchange after each use. The picture is privately screened on or shortly after arrival for

the benefit of the trade and particularly the exhibitors which hold first-run contracts. The contracts held by such exhibitors generally give them wide selective privileges which enable them to reject a substantial number of the features covered by their contracts after the picture has been screened for them. If the theatre is accepted for first-run exhibition, it is exhibited in a first-run theatre and subsequently in the remaining theatres in accordance with their respective playing positions, established by the run designated in their respective license contracts. If it is rejected it is offered for license to other exhibitors operating first-run theatres or successively offered for license to exhibitors operating subsequent-run theatres in the order of the runs on which they play. As the first-run exhibitor not only has the opportunity to screen the picture but also frequently obtains reports on the box-office performances of the picture in key cities before making his selection, the pictures rejected are almost invariably inferior as box-office attractions to those selected.

127. Exhibitors holding first-run license contracts for the pictures released by one or more of the defendant distributors ordinarily charge the highest admission prices in the towns or cities where such first-run theatres are located as [fol. 3181] their programs consist of selected features comprising the highest quality of available motion picture entertainment.

128. The first-run exhibitor is also usually required to charge the highest admission price as a condition of securing a given clearance over subsequent-run theatres. Subsequent-run theatres could not normally play a picture so profitably at the same admission price as the first-run in view of the fact that they must play it at a substantially later date after the capacity of the picture to attract an audience from the particular clearance zone has been partially exhausted by the first run. The same considerations generally compel a difference in admission prices corresponding to a difference in run and clearance for the same picture in all subsequent-run theatres. The result is that the entire admission price, run and clearance structure of the theatres in a given town or city is subject to run and clearance terms fixed in license agreements between the major distributors and first-run exhibitors, and the availability to subsequent-run exhibitors of the most

profitable features is determined by the manner in which the first-run exhibitor exercises his selective privilege. In recognition of this fact the producer-exhibitor defendants have uniformly refrained from operating subsequent-run theatres in towns or cities where they do not operate first-run theatres.

G. Local Exhibition Monopolies

129. In the course of integrating the production and exhibition branches of the industry as heretofore recited, the producer-exhibitor defendants have acquired control of a substantial number of local exhibition monopolies. In many instances they acquired circuits of theatres which had already established such a monopoly prior to affiliation and have maintained such monopolies. In either case these monopolies consist of receiving a substantial majority of [fol. 3282] the total theatre admission revenue in large communities, generally cities of more than one hundred thousand population, and paying a substantial majority of the total film rentals received by distributors from all theatres located in such a community. In such communities competing unaffiliated exhibitors operate only at the sufferance of the producer-exhibitor defendants and they can offer no substantial competition to affiliated exhibitors either with respect to the terms on which films are licensed or the terms on which they are exhibited to the public.

130. Such monopolies have been established and maintained by acquiring control of the first-run theatres or the theatres operating on the first and other early runs. By control of first-run theatres alone, affiliated exhibitors have been able to secure as much as two-thirds of the total theatre admissions paid in cities as large as 250,000. This result is accomplished in part, by maintaining a long clearance and substantial admission price differential between the first and subsequent runs. In larger cities, affiliated exhibitors have found it necessary to control the theatres operating in the first two or three runs in order to secure a similar proportion of the total available film revenue, but, in either case, clearance and runs have been so adjusted that few unaffiliated theatres, if any, have an opportunity to play a first-class picture until all or nearly all of the affiliated theatres have exhibited it. A similar pattern occurs with respect to affiliated exhibitor control over first and subse-

quent-run theatres and the distribution of total film revenue in a substantial majority of the cities of the United States with a population of 100,000 or more. In acquiring such film revenue monopolies the defendants have not generally found it necessary to acquire control of all the theatres most suitable for first and early run exhibition in such cities. By this control of the licensing of all first class features they have been able to exclude such theatres from first or early run operation while in unaffiliated hands.

[fol. 3183] 131. More than 80% of all the metropolitan first-run theatres [1] are affiliated theatres. More than 95% of the features exhibited in metropolitan first-run theatres are released by the distributor defendants. In the following metropolitan cities all of the first-run theatres are affiliated theatres:

Boston, Mass.; New Haven, Conn.; Albany, N. Y.; Brooklyn, N. Y.; Newark, N. J.; Philadelphia, Pa.; Washington, D. C.; Charlotte, N. C.; Memphis, Tenn.; New Orleans, La.; Houston, Texas; Dallas, Texas; Oklahoma City, Okla.; Kansas City, Mo.; Cincinnati, Ohio; Cleveland, Ohio; Chicago, Ill.; Milwaukee, Wis.; Des Moines, Iowa; Minneapolis, Minn.; St. Paul, Minn.; Omaha, Nebr.; Salt Lake City, Utah.

132. In only 4 [2] of the 92 cities of the United States with populations of 100,000 and over are there no affiliated theatres. In 73 of the remaining 88, the producer-exhibitors operate enough first-run theatres in each to receive a substantial majority of the total theatre admissions paid in each of these cities. The five producer-exhibitors also own or operate one or more theatres in 200 of the 283 cities of population between 25,000 and 100,000.

VI. Interstate Commerce

133. The business of producing motion pictures embraces the photographing of scenes on reels of celluloid film, said scenes having been prepared in advance by the assemblage,

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[1] For definition of a metropolitan theatre see Paragraph 17(d).

[2] Tulsa, Oklahoma; Fall River, Massachusetts; Tacoma, Washington; and Fort Wayne, Indiana.

[fol. 3184] at the studios, or upon location, of the necessary directors, actors, actresses, extra players, and other persons and facilities necesary to complete the scenes to be photographed. The personnel necessary to the production of a motion picture is usually assembled at the studios in California, where most of the pictures are made, and costumes and raw materials entering into the making of pictures, in many instances, are manufactured outside the State of California and shipped across state lines to the studios for use in production.

134. Approximately two billion feet of negative stock celluloid film are used in the production of motion pictures annually, practically all of which is manufactured at plants located in the states of New York and New Jersey. Approximately 90% of the raw negative stock is shipped across state lines to the studios in California to be utilized in the production of motion pictures.

135. After the scenes going to make up a motion picture have been photographed, the film is developed, cut, fixed, edited and arranged at the studios in California. Then the negatives are shipped to laboratories located principally in California, New York and New Jersey, where the required number of positive prints are made (usually between 50 and 250) to fulfill the contractual requirements for the picture in question. The positive prints so prepared are the motion picture films which are protected in motion picture theatres, in most instances, after having been shipped across state lines to the film exchanges maintained in the various exchange cities throughout the country.

136. In the spring of each year, producers of motion pictures announce their prospective programs for the coming exhibition season. These programs describe the pictures to be produced, so far as known, giving their titles, the names of the stars and other featured players, the directors, and such other pertinent material as may be avail- [fol. 3185] able. Plans are then made for the production and release of the photoplays upon the program, at approximately regular intervals throughout the exhibition season, which begins on September 1 of each year.

137. When programs have been arranged and fixed, the distributors, through their salesmen, who work out of the

exchanges, solicit exhibitors to enter into license agreements covering exhibition of photoplays for the coming season. Each photoplay is copyrighted under the Copyright Laws of the United States, and the solicited license agreements as signed by exhibitors are, by the terms thereof, usually transmitted to the principal office of the distributor, usually in New York, where such agreements are either approved or rejected.

138. The positive prints, when prepared at the laboratories, are packed in tin boxes which, in turn, are placed in wooden cases, and said positive films as completed, are from time to time shipped and transported from the laboratories where completed, across state lines to the various film exchanges throughout the country where they are utilized.

139. Upon receipt of the motion picture films by an exchange, they are delivered to the various exhibitors in the exchange territory, who, under their license agreements with distributors, have the first or prior right to exhibit the respective films, and are then returned to the exchange and transported to the exhibitors having the next succeeding right to exhibit, and so on until all exhibitors who are to exhibit the photoplays have been served, or transported directly from the prior-run theatre to a subsequent-run theatre. Many shipments of films from exchange to exhibitor, and from exhibitor to exchange, cross state lines. When the films are worn out, they are shipped or returned to laboratories for scrapping; which shipments, as a rule, cross state lines, the final destination usually being New York City.

140. Thus, in the course of producing, distributing and exhibiting motion pictures there is a constant, continuous stream of trade and commerce between the states, in and between the territories and the states of the United States, [fol. 3186] consisting of the solicitation and the making of contracts for the future delivery over periods of time of films to be produced and delivered as hereinbefore described; the assemblage of personnel, property and material at the studios or upon location for the production of pictures; the transportation of negative films from the studios to the laboratories where positive prints of motion picture films are prepared, and from there shipped to film exchanges throughout the United States; the continuous dis-

tribution of said films from the exchanges to and from motion picture theatres located in the areas served by the respective exchanges; the interchange of said films between each exchange and other exchanges of the same distributor located in other states of the United States or in the territories thereof and, finally, the shipment of said films from said exchanges throughout the United States to points within the State of New York or elsewhere for scrapping.

141. The activities of each branch of the motion picture industry are either in or directly affect trade and commerce among the several states.

[fol. 3187] VII. Offenses Charged

A

Conspiracies To Unreasonably Restrain and Monopolize the Production, Distribution and Exhibition of Motion Pictures Participated in By All of the Distributor Defendants

142. All of the distributor defendants, each well knowing all the matters and things hereinbefore alleged, for many years last past, have combined and conspired with each other to unreasonably restrain, and pursuant to said combinations and conspiracies have in fact unreasonably restrained, trade and commerce in the production, distribution and exhibition of motion pictures in the United States, and have attempted to and have succeeded in monopolizing such trade and commerce in violation of Sections 1 and 2 of the Act of Congress, approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," commonly known and hereinafter referred to as the "Sherman Act," in the following manner:

143. By concertedly aiding and assisting in the loaning and exchanging of production personnel under contract to each major producer, and costly production equipment owned by each major producer, to and with other major producers on uniform, non-competitive terms.

144. By concertedly aiding and assisting the major producers to exclude independent producers from access to production personnel under contract to each major pro-

ducer, and costly production equipment owned by each major producer, on the same terms on which they are made available to major producers.

145. By concertedly fixing license terms in contracts made before the licensees have had a fair opportunity to estimate the value and character of the films licensed and before such films have been completed or trade shown.

[fol. 3188] 146. By concertedly fixing the run, clearance and minimum admission price terms on which an exhibitor may play features in license agreements covering periods of a year or more.

147. By concertedly conditioning the licensing of one film or group of films upon the licensing of another film or group of films.

148. By concertedly conditioning the licensing of films in one theatre or group of theatres upon the licensing of films in another theatre or group of theatres, which has no relationship to the first theatre or group of theatres other than common ownership or control or a common film buying agent.

149. By concertedly discriminating with respect to the license terms granted to theatres in large circuits because such theatres are a part of a circuit. The means of such discrimination most frequently employed with respect to such theatres are the following:

(a) Run

In areas where such theatres compete with independent theatres, the defendant distributors have offered to license feature pictures distributed by them to said theatres on a run ahead of said independent theatres, and only if said circuit theatres decline to license said product on said prior run is that run offered to competing independent exhibitors. Said priority of run has ordinarily been continued from season to season, that is to say, the said defendants reserve a prior run for circuit theatres, and refuse to license feature pictures distributed by them on said prior run to independent exhibitors, even though said independent exhibitors request the prior run from one or more of

the defendants before said defendants have agreed in writing to license their feature pictures for an approaching motion picture season on said prior run to competing circuit theatres. Feature pictures distributed by the defendants have been licensed to circuit theatres on prior runs, although competing independent theatres, by virtue of their location, seating capacity, equipment, appearance, and the amount of other [fol. 3189] product they already have under contract, are as suitable or more suifable than competing circuit theatres to exhibit the feature pictures requested on a prior run, and although they may offer and be in a position to pay a higher film rental for a feature pictures than the competing circuit theatres. As a result, independent exhibitors operating in competition with circuit theatres have been and are systematically excluded from the opportunity to procure preferred runs of feature pictures distributed by the defendants in the localities in which circuit theatres operate. In many instances the defendant distributors have refused to license an independent exhibitor on any run at all in order to protect a circuit theatre from competition, regardless of how much clearance in favor of the circuit theatre the independent exhibitor is willing to submit to and regardless of what admission price he will charge or what rental he will pay.

(b) Delivering prints

In delivering prints for exhibition by independent exhibitors competing on the same run in the same exchange territory with such circuit theatre, the distributor defendants ordinarily serve the circuit theatre first if there is an insufficient number of prints available in the exchange to serve all theatres operating on the same run simultaneously, and thus give circuit theatres prior playing dates not provided for in their exhibition contracts.

(c) Clearance

The defendant distributors have granted such circuit theatres arbitrary and unreasonable clearance over competing independent theatres. In ...ny instance such defendants have granted clearance to circuit the-

atres which serves no legitimate interest of the distributor. Such clearance is granted by the defendants solely at the insistence of said circuit theatres and for the purpose of aiding said circuit theatres to sup- [fol. 3190] press the competition offered by independent theatres rather than to secure the most revenue for the distributor. As a result, independent theatres, in many instances, are unable to exhibit feature pictures until their novelty and freshness have worn off and their box office value has been seriously diminished, solely because earlier exhibition in the independent theatres would decrease the profits of a circuit exhibitor.

(d) Minimum admission prices

In many instances each distributor defendant has agreed with such circuit theatres to require independent theatres exhibiting their feature pictures on a run subsequent to that of the circuit theatre, to charge a minimum admission price for such exhibition so high that such subsequent run independent theatres cannot operate successfully.

(e) Prohibition of double features on subsequent runs

In many instances each defendant distributor has agreed with such circuit theatres to prevent independent theatres exhibiting their feature pictures on a run subsequent to that at a circuit theatre from exhibiting, as part of a double feature program, feature pictures which have been exhibited at the circuit theatre.

(f) Selectivity of deals

In contracting with such a circuit of theatres, each defendant distributor ordinarily gives it the right to select a certain number of the feature pictures released by it each season for exhibition at the circuit's theatres. In contracting with independent theatres, however, each such defendant has ordinarily refused to license any of its product unless the independent exhibitor contract for all of the feature pictures released by it. Or, in the event that independent exhibitors are granted selective privileges in licensing pictures, the selection granted to them has ordinarily not been as great as that granted to competing circuit theatres.

[fol. 3191] (g) Designation of play dates

In many instances each distributor defendant, in licensing feature pictures to independent exhibitors, requires that certain pictures be exhibited upon designated days or reserves the privilege of designating the days on which a certain number of the feature pictures licensed should be exhibited. Ordinarily, each such defendant designates that such feature pictures be played on the most desirable days in the week from the standpoint of attracting patronage, that is, Saturdays, Sundays or holidays, and ordinarily the feature pictures which are designated to be played on such preferred days are ones which the exhibitor has licensed on percentage terms. The independent exhibitor is forced to accept such designation of play dates in order to obtain the product necessary for the operation of his theatre. Although each distributor may require such circuit theatres to play certain pictures on designated days, the number of pictures designated by each distributor to be so played by circuit theatres is usually not as great as the number designated to be so played by independent exhibitors.

(h) Forcing of short subjects, news reels, trailers, serials, reissues, westerns and foreigns

In many instances each defendant distributor has refused to license its feature pictures to independent exhibitors unless they also agree to license and pay for the short subjects, news reels, trailers, serials, reissues, westerns and foreigns released by that defendant, even though the independent exhibitor does not wish to license such additional films and has no need for them. This practice is usually not enforced against such circuit theatres.

(i) Film rentals

In many instances, each distributor defendant has required independent theatres to pay higher film rentals for the exhibition of feature pictures on a given run than it requires of such circuit theatres, and in many [fol. 3192] instances independent exhibitors are required to pay as much or more for the exhibition of feature pictures on a subsequent run as circuit theatres

pay for the exhibition of the same feature pictures on a prior run. Moreover, independent exhibitors are required to play a greater number of pictures on percentage terms than are such circuit theatres and the latter theatres are permitted to pay flat rentals for many pictures played by independent exhibitors on a percentage basis. Independent exhibitors are also required to play more percentage pictures with a minimum guaranteed film rental than are such circuit theatres.

(j) Advertising allowances

In many instances each distributor defendant, in licensing feature pictures to such a circuit of theatres, agrees to pay the cost of advertising such pictures or share it with the circuit. The defendants seldom, if ever, agree with independent exhibitors to pay for or share advertising costs.

(k) Score charges

Independent exhibitors are required by each defendant distributor to pay score charges * on practically every picture which they exhibit, while such circuit theatres seldom, if ever, are required to pay score charges on more than half of the pictures which they play.

(l) Optional contracts

In many instances each defendant distributor gives such circuit theatres the privilege or option of playing certain specified features without assuming any binding obligation to do so. This is in reality a selective [fol. 3193] contract which gives such circuit theatres wide choice in regard to the pictures which they ex-

* Originally, sound came from a disc or record, the playing of which was synchronized with the picture. A charge was made for the use of the disc, which came to be called a "score charge." As sound developed, the sound track was superimposed on the film and the disc was discarded. Nevertheless, distributors continued to require the payment of score charges which in reality amount to additional film rental.

hibit. Such benefits are seldom, if ever, extended to independent exhibitors.

(m) Contract modifications

In many instances each defendant distributor permits material changes and alterations in its contracts with such circuit theatres. Seldom, if ever, are such modifications made by the defendant distributors in their contracts with independent exhibitors, and in the cases where they are made, the modifications are much more limited than when the contract is with such a circuit of theatres. Among the types of modifications made in contracts with such circuit theatres are the following:

1. Reduction of film rentals where box-office receipts upon the exhibition of pictures covered by the contract have been disappointing.

2. Reduction in film rentals where pictures covered by the contract are double-featured.

3. Reduction in film rentals where pictures covered by the contract are shown with vaudeville.

4. Reduction in film rentals where pictures covered by the contract are shown in connection with a premium give-away, by which attendance at the theatre is encouraged.

5. Changing pictures covered by a contract specifying percentage of box-office revenue as rental, to a flat rental, so-called, which means a fixed rental designated in terms of dollars and cents.

6. Elimination of pictures covered by contracts by repeating or extending the playing time of other pictures covered by the same contracts.

[fol. 3194] 7. Transfer of pictures under contract for exhibition at one circuit theatre to another theatre operated by the same circuit.

8. Cancellation of some of the pictures covered by a contract when other pictures are more successful at the box office than the distributor and circuit theatre have anticipated.

(n) Overage and underage

In many instances each defendant distributor permits such a circuit of theatres to play fewer pictures in one of its theatres than the contract requires, and to charge the deficit thus created against pictures played in another one of its theatres in excess of the commitment of such theatre. This privilege is seldom, if ever, extended to independent exhibitors.

(o) Move-overs

In many instances such a circuit of theatres is permitted by each of the defendant distributors to move a picture from one of its theatres where its exhibition has been completed to another theatre operated by the same circuit for a continued run or exhibition. This practice, which is generally confined to metropolitan areas, reduces the box-office value of a picture when it reaches subsequent-run exhibitors. This privilege is seldom, if ever, extended to independent exhibitors.

(p) Overbuying

In many instances such a circuit of theatres is knowingly permitted by the defendants to contract for the exhibition in certain theatres operated by it of more films than such theatres can profitably exhibit for the purpose of withholding such films from competing [fol. 3195] independent exhibitors who need them in order to operate their theatres. Many pictures so licensed by such circuit theatres are never exhibited by them because of their lack of screentime to play them, and yet they are released to competing independent exhibitors, if at all, only after the elapse of such a length of time after their release that their exhibition value has been substantially diminished. In other cases, the circuit theatres actually exhibit all of the pictures licensed by them by following a policy of making a greater number of weekly program changes than are necessary to meet the entertainment requirements of their patrons.

[fol. 3196] B

Conspiracies To Unreasonably Restrain and Monopolize the Exhibition of Motion Pictures Participated In By the Producer-Exhibitor Defendants

150. All of the producer-exhibitor defendants, each well knowing all of the matters and things hereinbefore alleged, for many years last past, have combined and conspired with each other to unreasonably restrain and monopolize and pursuant to said combinations and conspiracies have in fact unreasonably restrained and monopolized, trade and commerce in the exhibition of motion pictures in the United States, in violation of Sections 1 and 2 of the Sherman Act, in the following manner:

151. By concertedly conditioning the licensing of films distributed by one producer-exhibitor defendant in theatres operated by another such defendant upon the licensing of film distributed by the latter defendant in the theatres operated by the former defendant.

152. By concertedly excluding independently produced films from affiliated theatres.

153. By concertedly excluding unaffiliated exhibitors from the operation of competing first-run theatres in cities and towns where affiliated theatres are located.

154. By concertedly excluding unaffiliated exhibitors from operating competing theatres on the same run as the subsequent-run affiliated theatres in the cities and towns where such affiliated theatres are located.

155. By concertedly using the first and early-run affiiated theatres to control the film supply, run, clearance and admission prices of operators of competing unaffiliated theatres in the cities and towns in which affiliated theatres are located.

156. By concertedly coercing and intimidating unaffiliated exhibitors located in towns where there are no affiliated theatres to license their films upon arbitrary terms by expressed or implied threats to build or acquire a competing [fol. 3197] theatre and use it to destroy the business of the unaffiliated exhibitor.

157. By concertedly coercing and intimidating exhibitors located in towns where affiliated theatres are located or

where an affiliated exhibitor desires to locate into relinquishing control of his theatre or a share of the profits thereof to the affiliated exhibitor by expressed or implied threats to deprive him of access to films necessary to the successful operation of his theatre or to so limit the terms and conditions on which he licenses such films that they may no longer be profitably exhibited by him.

158. By pooling or otherwise sharing with each other the profits of affiliated theatres owned or controlled by two or more producer-exhibitor defendants, located in the same competitive area and frequently operating on the same run, which would operate in competition with each other except for such pooling or profit sharing agreements.

159. By agreeing to divide the available films among affiliated theatres owned or controlled by two or more producer-exhibitor defendants located in the same competitive area, without competitive negotiations, in situations where such theatres would otherwise compete with each other for such films.

160. By entering into joint arrangements with respect to a single theatre, whereby the film buying control or proceeds from operation thereof is divided between two or more producer-exhibitor defendants.

161. By concertedly refraining from building, buying or offering to lease theatres in areas where they might compete with existing affiliated theatres, except under agreements preventing competition such as those noted in paragraphs 158, 159, and 160 above.

162. By concertedly effecting a division of the territory of the entire United States between them for theatre operating purposes.

163. By concertedly acquiring and maintaining a monop- [fol. 3198] oly of the business of exhibiting motion pictures in approximately 80% of the cities of the United States with populations of more than 100,000.*

164. By concertedly acquiring and maintaining a monopoly of the business of exhibiting motion pictures in all of the cities of the United States with populations of more than 1,000,000.*

* All population figures are taken from 1940 census.

165. By concertedly acquiring and maintaining a monopoly of the business of exhibiting motion pictures in each of the following cities of the United States with populations of more than 100,000* for theatres affiliated with the producer-exhibitor defendants respectively named thereafter.

City	Population Rank	Defendants
New York, New York	1	Loew's, Paramount, RKO, Warner
Chicago, Ill.	2	Paramount, RKO, Warner
Philadelphia, Pa.	3	Fox, Paramount, Warner
Detroit, Mich.	4	Fox, Paramount
Los Angeles, Calif.	5	Fox, Loew's, Paramount, RKO, Warner
Cleveland, Ohio	6	Loew's, RKO, Warner
Boston, Mass.	9	Loew's, Paramount, RKO
Pittsburgh, Pa.	10	Loew's, Warner
Washington, D. C.	11	Loew's, RKO, Warner
San Francisco, Calif.	12	Fox, Loew's, Paramount, RKO
Milwaukee, Wisconsin	13	Fox, Warner
Buffalo, N. Y.	14	Loew's, Paramount
New Orleans, La.	15	Loew's Paramount, RKO
Minneapolis, Minn.	16	Paramount, RKO
Cincinnati, Ohio	17	RKO
Newark, N. J.	18	Loew's, Paramount, RKO, Warner
Kansas City, Mo.	19	Fox, Loew's, Paramount
Houston, Texas	21	Loew's, Paramount
Seattle, Wash.	22	Fox
Rochester, N. Y.	23	Loew's, Paramount, RKO
Denver, Colo.	25	Fox, Loew's, RKO
Portland, Ore.	26	Fox
Columbus, Ohio	27	Loew's, RKO
Oakland, Calif.	28	Fox
Atlanta, Ga.	29	Loew's, Paramount
Jersey City, N. J.	30	Loew's, RKO, Warner
Dallas, Tex.	31	Paramount
Memphis, Tenn.	32	Loew's, Paramount, Warner
St. Paul, Minn.	33	Paramount, RKO
Birmingham, Ala.	35	Paramount
San Antonio, Texas	37	Paramount, Warner
Omaha, Nebr.	39	Paramount, RKO
Dayton, Ohio	40	Loew's, RKO
Syracuse, N. Y.	41	Loew's, RKO, Warner
Oklahoma City, Okla.	42	Paramount, Warner
San Diego, Calif.	43	Fox
Worcester, Mass.	44	Loew's, Paramount, Warner
Richmond, Va.	45	Loew's
Fort Worth, Tex.	46	Paramount
Jacksonville, Fla.	47	Paramount
Miami, Fla.	48	Paramount
Youngstown, Ohio	49	Warner
Hartford, Conn.	51	Loew's, Paramount, Warner
Grand Rapids, Mich.	52	Paramount, RKO
Long Beach, Calif.	53	Fox
New Haven, Conn.	54	Loew's, Paramount, Warner

* All population figures are taken from 1940 census.

[fol. 3199]

City	Population Rank	Defendants
Des Moines, Iowa	55	Paramount, RKO
Flint, Mich.	56	Paramount, RKO
Salt Lake City, Utah	57	Paramount
Springfield, Mass.	58	Loew's, Paramount, Warner
Bridgeport, Conn.	59	Loew's, Warner
Norfolk, Va.	60	Loew's
Yonkers, N. Y.	61	Loew's, Paramount, RKO
Scranton, Pa.	63	Paramount
Paterson, N. J.	64	Paramount, Warner
Albany, N. Y.	65	RKO, Warner
Chattanooga, Tenn.	66	Paramount
Trenton, N. J.	67	RKO
Spokane, Wash.	68	Fox
Camden, N. J.	71	Warner
Erie, Pa.	72	Warner
Wichita, Kans.	74	Fox
Knoxville, Tenn.	75	Paramount
Wilmington, Del.	76	Loew's, Warner
Reading, Pa.	79	Loew's, Warner
Tampa, Fla.	83	Paramount
Sacramento, Calif.	85	Fox
Peoria, Ill.	86	Paramount
South Bend, Ind.	88	Paramount
Lowell, Mass	89	Paramount, RKO
Utica, N. Y.	90	Warner
Charlotte, N. C.	91	Paramount
Duluth, Minn.	92	Paramount

[fol. 3200]

C

Conspiracies to Unreasonably Restrain and Monopolize the Production of Motion Pictures Participated in by the Producer Defendants

166. All of the producer defendants, each well knowing all of the matters and things hereinbefore alleged, for many years last past, have combined and conspired with each other to unreasonably restrain and monopolize and pursuant to said combinations and conspiracies have in fact unreasonably restrained, trade and commeree in the production of motion pictures in the United States, and have attempted to and have succeeded in monopolizing such trade and commerce in violation of Sections 1 and 2 of the Sherman Act, in the following manner:

167. By concertedly placing under contract most of the valuable stars, featured players, directors, technicians and others who have gained fame, prestige, renown, artistic, technical or other great value in the production branch of the industry.

168. By concertedly loaning and exchanging production personnel under contract to each major producer, and costly production equipment owned by each major producer, to and with other major producers on uniform, non-competitive terms.

169. By concertedly excluding independent producers from access to production personnel under contract to each major producer, and costly production equipment owned by each major producer, on the same terms on which they are made available to major producers.

D

Combinations of Which Each Producer-Exhibitor Defendant is a Member Which are Illegal Per Se

170. Each of the combinations of parent and subsidiary corporations which respectively form Fox, Loew's, Paramount, RKO and Warner constitutes a separate combination and monopoly in restraint of trade, which in and of [fol. 3201] itself has violated Sections 1 and 2 of the Sherman Act in the following manner:

171. By preventing independent producers from competing with such a combination in the production of films.

172. By preventing independent distributors from competing with such a combination in the distribution of films.

173. By preventing unaffiliated exhibitors from competing with such a combination in the operation of theatres in cities and towns where theatres operated by it are located.

174. By acquiring and maintaining a monopoly of the business of exhibiting motion pictures in areas serving a substantial percentage of the total population of the United States.

175. By coercing and intimidating unaffiliated exhibitors located in towns where such a combination operates no theatres to license its films upon arbitrary terms by expressed or implied threats to build or acquire a competing theatre and use it to destroy the business of such unaffiliated exhibitors.

176. By coercing and intimidating unaffiliated exhibitors located in towns where such a combination operates theatres

or where it desires to operate theatres, into relinquishing control of their theatres or a share of the profits thereof, to it, by expressed or implied threats to deprive them of access to its films or to so limit the terms and conditions on which they license such films that they may no longer be profitably exhibited by them.

177. By conditioning the licensing of films distributed by such a combination in theatres operated by another such combination, upon the licensing of films distributed by the latter combination in theatres operated by the former combination.

[fol. 3202]

E

Illegal Contracts Between Each Distributor Defendant and Circuit Theatres

178. Each defendant distributor, well knowing all the matters and things hereinbefore alleged, for many years last past, has contracted with various theatre circuits throughout the United States, including the affiliated circuits hereinbefore mentioned, to restrain and, pursuant to such contracts, has in fact unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures among the several States of the United States, in violation of Section 1 of the Sherman Act, by entering into licensing agreements with said circuits of theatres which contain provisions calculated to impose on independent exhibitors in competition with such circuit theatres, one or more of the discriminatory restrictions referred to in the lettered subparagraphs of paragraph 149, regardless of whether such license contracts were made pursuant to any prior concerted action, combination or conspiracy between two or more defendants.

F

Illegal Coercion By Each Producer-Exhibitor Defendant

179. Each producer-exhibitor defendant, well knowing all the matters and things hereinbefore alleged, for many years last past, has violated Section 2 of the Sherman Act by using the monopolistic buying power of its circuit of theatres to compel each of the defendant distributors and other distributors of films to enter into licensing agreements with its circuit on terms which prevent unaffiliated theatres

from in fact competing with its circuit theatres, either with respect to the terms on which said unaffiliated theatres license films or the terms on which they exhibit films to the public, regardless of whether such license contracts were made pursuant to any prior concerted action, combination or conspiracy between two or more defendants.

[fol. 3203] G

Illegal Contracts Made by Each Defendant Distributor with Exhibitors Generally

180. Each distributor defendant, well knowing all the matters and things hereinbefore alleged, for many years last past has made divers contracts with exhibitors generally throughout the United States to unreasonably restrain and, pursuant to such license contracts, has in fact unreasonably restrained trade and commerce in the distribution, production and exhibition of motion pictures in the United States in violation of Section 1 of the Sherman Act, in the following manner, regardless of whether such license contracts were made pursuant to any concerted action, combination or conspiracy between two or more defendants.

181. By fixing license terms in contracts made before the exhibitor has had a fair opportunity to estimate the value and character of the films licensed and before such films have been completed or trade shown.

182. By fixing the run, clearance and minimum admission price terms in license agreements covering large groups of pictures of widely varying quality released over periods of a year or more.

183. By conditioning the licensing of one film or group of films upon the licensing of another film or group of films.

184. By conditioning the licensing of films in one theatre, or group of theatres, upon the licensing of films in another theatre, or group of theatres, which has no relationship to the first theatre, or group of theatres, other than common ownership or control or a common film buying agent.

185. By making clearance agreements which are calculated to suppress competition between exhibitors rather than to protect the distributor's revenue.

[fol. 3204] 186. By refusing to license a run on any terms, for the purpose of protecting an exhibitor from competition rather than to protect the distributor's revenue.

187. By arbitrarily withholding prints available in an exchange from one exhibitor in order to give another exhibitor a prior playing date not provided for in his licensing agreements.

VIII. Prayer

Wherefore, plaintiff prays:

(1) That the court issue its preliminary injunction restraining the defendants herein, and each of them, from building, buying, leasing, or otherwise acquiring any additional theatres or any further interest, or interests, in any additional theatres either directly or indirectly through the acquisition thereof by subsidiary or associated corporations or otherwise until the final decree herein or until the further order of this court.

(2) That each of the contracts, combinations, and conspiracies in restraint of interstate trade and commerce, together with the attempts to monopolize and the monopolization of the same, hereinbefore described, be declared illegal and violative of the Sherman Act.

(3) That the defendants herein, their subsidiaries, and each of them, and each and all of their respective officers and directors, and each and all of the respective agents, servants and employees, and all persons acting or claiming to act on behalf of the defendants, their subsidiaries, or any of them, be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the attempts at monopolization, the monopolies and all restraints of said interstate trade and commerce in the production, distribution, and exhibition of motion pic-
[fol. 3205] tures described herein, and from entering into and carrying out, directly or indirectly, expressly or impliedly, any monopolies or restraints of interstate trade and commerce similar to those alleged herein to be illegal.

(4) That a nationwide system of impartial arbitration tribunals or such other means of enforcement as the court may deem proper be established pursuant to the final decree of this court in order to secure adequate enforcement of

whatever general and nation-wide prohibitions of illegal practices may be contained therein.

(5) That the integration of the production and exhibition branches of the industry by the producer exhibitor defendants herein, and each of them, be declared to be unlawful as an instrumentality of monopoly and restraint upon interstate trade and commerce, and violative of the Sherman Anti-Trust Act.

(6) That the defendants Paramount Pictures, Inc., Twentieth Century-Fox Film Corporation, Warner Bros. Pictures Inc., Loew's, Incorporated, and Radio-Keith-Orpheum Corporation, and each of them, under the direction and supervision of the court be ordered and directed to divest themselves of all interest and ownership, both direct and indirect, either in theatres and theatre holdings or in production and distribution facilities and that they, and each of them, and their respective successors be permanently enjoined from acquiring, directly or indirectly, any other interests in the branch of the industry divested or in any persons, firms, or corporations which are engaged or may engage in that branch of the industry; said divestiture to be accomplished and carried out upon such terms and conditions as the court may deem proper.

(7) That the defendants Paramount Pictures, Inc., Twentieth Century-Fox Film Corporation, National Theatre Corporation, Warner Bros. Pictures, Inc., Warner [fol. 3206] Bros. Circuit Management Corporation, Loew's, Incorporated, Radio-Keith-Orpheum Corporation, Keith-Albee-Orpheum Corporation, R. K. O. Proctor Corporation and R. K. O. Midwest Corporation and each of them, under the direction and supervision of the court be ordered and directed to divest themselves of all interest and ownership, both direct and indirect, in any theatres which the court shall find have been used by one or more of them to unreasonably restrain trade and commerce in motion pictures in violation of Section 1 of the Sherman Act or to monopolize trade and commerce in motion pictures in violation of Section 2 of the Sherman Act.

(8) That the plaintiff have such other and further relief as the court may deem proper.

(9) That the plaintiff recover its costs herein.

United States of America, John T. Cahill, United States Attorney for the Southern District of New York.

Robert H. Jackson, Attorney General. Thurman Arnold, Assistant Attorney General. James V. Hayes. Robert L. Wright, Robert E. Sher, J. Stephen Doyle, Jr., John F. Clagett, James M. Malloy, Special Assistants to the Attorney General. J. Frank Cunningham, Seymour Simon, Special Attorneys.

[fol. 3207] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER OF NATIONAL THEATRES CORPORATION TO THE AMENDED AND SUPPLEMENTAL COMPLAINT

[fol. 3208] To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

National Theatres Corporation (sometimes hereinafter referred to as "National"), by its solicitors, Dwight, Harris, Koegel & Caskey, for its Answer to the Amended and Supplemental Complaint (hereinafter referred to as the "Amended Complaint") herein:

1. Answering Paragraph 1 of the Amended Complaint, denies that it has violated, is violating, or is about to violate any section or sections of the Act of July 2, 1890, commonly known as the Sherman Act.

2. Denies the allegations and each of them in Paragraph 2 of the Amended Complaint, and avers that neither it nor any of its representatives has acted unlawfully or in violation of the Act of July 2, 1890, either within the Southern District of New York or elsewhere.

3. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations or any [fol. 3209] of them in Paragraphs 3, 4, 5, 6, 9, 10, 11, 14, 16(d), 16(f), 17(d), 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28,

29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 102, 104, 105, 106, 114, 117, 126, 132, 133, 134, 135, 137, 138, 139, 142, 143, 144, 145, 146, 147, 148, 166, 167, 168, and 169 of the Amended Complaint.

4. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations or any of them in Paragraph 7(a) of the Amended Complaint, except it admits that Twentieth Century-Fox Film Corporation (hereinafter sometimes referred to as "Fox"), is a corporation organized and existing under the laws of the State of New York, with a place of business at 444 West 56th Street, New York, N. Y., and is engaged in the business of producing and of distributing motion pictures in various parts of the United States.

Answering the allegations of Paragraph 7(b) of the Amended Complaint, denies that National is a holding company for the theatre interests of Fox.

5. Answering the allegations of Paragraph 8 of the Amended Complaint, denies that Fox is an exhibitor of motion pictures and that National is a producer of motion pictures and protests the use of the appellation "producer-exhibitor defendant" to describe either of them.

6. Answering the allegations of Paragraph 15(b) of the Amended Complaint, denies that the term "major producer" is accurately defined in said paragraph and avers that said term is relative and could be applied to any of a number of producers who at the particular time might generally be regarded as the principal or more important producers.

7. Denies the allegations and each of them in Paragraphs 15(c), 15(e), 16(c), 17(h), 17(o), 17(s), 17(t), 101, [fol. 3210] 103, 109, 110, 112, 113, 115, 116, 119, 120, 122, 124, 125, 127, 128, 129, 130, 140, 141, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, and 187 of the Amended Complaint.

8. Answering the allegations of Paragraph 16(b) of the Amended Complaint, denies the term "major distributor"

is accurately defined in said paragraph and avers that said term is relative and could be applied to any of a number of distributors who at the particular time might generally be regarded as the principal or more important distributors.

9. Denies the allegations and each of them in Paragraph 16(g) of the Amended Complaint, except it admits that the term "block booking" is sometimes applied to the simultaneous licensing of a number of motion pictures, most of which are to be produced in the future.

10. Denies the allegations and each of them in Paragraph 17(b) and 17(c) of the Amended Complaint, except it admits that the term "affiliated theatre" may be used where the policy under which a theatre is operated and the licensing of pictures for exhibition in such theatre are both subject to control actually exercised by a defendant.

11. Denies the allegations and each of them in Paragraph 17(e) of the Amended Complaint, except it admits that the theatres operated by it which customarily contract for and exhibit first runs of pictures in the communities where they are located are sometimes called "first run theatres."

12. Denies the allegations and each of them in Paragraphs 17(f) and 17(g) of the Amended Complaint, except it admits that a group of two or more theatres owned, controlled or managed by the same interests are sometimes referred to as a "circuit" and that a theatre in such group is sometimes referred to as a "circuit theatre."

[fol. 3211] 13. Answering the allegations in Paragraphs 17(i), 17(j), 17(k), 17(l), 17(m), 17(n), 17(p), 17(q) and 17(r), admits that the terms referred to in these paragraphs are sometimes used in the motion picture industry as therein defined.

14. Denies the allegations and each of them in Paragraph 38 of the Amended Complaint, except it admits that Fox was incorporated under the name of Fox Film Corporation on February 1, 1915, that the debt structure of Fox was voluntarily adjusted with the consent of its creditors, security holders and stockholders in the summer of 1933 and that in 1935 Fox acquired the property, business and assets

of Twentieth Century Pictures, Inc., and that in 1935 the name Fox Film Corporation was changed to Twentieth Century-Fox Film Corporation.

15. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations or any of them in Paragraph 41 of the Amended Complaint, except it admits and avers that Fox pictures are distributed by Twentieth Century-Fox Film Corporation and that exchanges for the distribution of Fox pictures are maintained in Denver, Colorado; St. Louis and Kansas City, Missouri; Los Angeles and San Francisco, California; Salt Lake City, Utah; Seattle, Washington; Portland, Oregon; Milwaukee, Wisconsin; and Omaha, Nebraska.

16. Denies the allegations and each of them in Paragraph 42 of the Amended Complaint, except it admits that Fox acquired approximately one-third of the common stock of West Coast Theatres, Inc., in August, 1925, and that in March, 1928, Fox acquired all the stock of Wesco Corporation.

17. Denies the allegations and each of them in Paragraph 43 of the Amended Complaint, except it admits that Wesco Corporation adjusted its capital structure in 1934 by volun- [fol. 3212] tary agreement among its creditors and stockholders, pursuant to which The Chase National Bank of the City of New York acquired 58% of the stock in Wesco and Fox Film Corporation retained 42%; that the name of Wesco Corporation was thereafter changed to National Theatres Corporation; that The Chase National Bank of the City of New York still retains 58% of the stock of National Theatres Corporation; and that direct and indirect subsidiaries of National Theatres Corporation operate theatres in the middle and far western parts of the United States; and except it admits that The Chase National Bank of the City of New York is and for some years has been a stockholder in Fox.

18. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations or any of them in Paragraph 45 of the Amended Complaint, except it admits that, as of November 2, 1940, direct or indi-

rect subsidiaries of National operated theatres as indicated by the following tabulation:

City	No. of theatres
Denver, Colo.	5
Detroit, Mich.	1
Kansas City, Mo.	3
Los Angeles Calif.	6
Milwaukee, Wis.	3
Portland, Ore.	3
San Francisco, Calif.	4
Seattle, Wash.	6

State	No. of theatres
Arizona	6
California	212
Colorado	34
Idaho	11
Illinois	20
Iowa	6
Kansas	56
Michigan	5
Missouri	37
Montana	19
Nebraska	8
New Mexico	6
Oregon	9
Utah	2
Washington	25
Wisconsin	48
Wyoming	12

[fol. 3213] 19. Denies the allegations and each of them in paragraph 87 of the Amended Complaint, except it admits that direct or indirect subsidiaries of National operate some theatres jointly with other exhibiting companies, and avers that such method of operation is not confined to theatres affiliated with one or more of the defendants to this action.

20. Denies the allegations and each of them in Paragraph 100 of the Amended Complaint, except it admits that during the period between 1919-1930, the cost of production of

motion pictures had mounted steadily, the cost of production was accelerated by the introduction of sound in motion pictures, many of the best features cost as much as $500,000 or more each to produce, and avers that with the increased cost of production licenses to exhibit feature pictures increased accordingly.

21. Denies the allegations and each of them in Paragraph 107 of the Amended Complaint, except it admits that some contracts to license motion pictures contain the terms under which the features licensed are to be exhibited over a period of one year or more, that one license agreement with a distributor may cover all the pictures to be released during the motion picture season or seasons covered by the license agreement or a lesser number to be selected from the whole, and that some license agreements have been negotiated prior to the commencement of the motion picture season to be covered by the license and before any of the features covered by the license had been released.

22. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations or any of them in Paragraph 108 of the Amended Complaint, except it admits that the quality of feature pictures varies, that feature pictures are placed in various price groups in some license agreements, that many of the features placed in the top price brackets in license agreements contain terms based upon a percentage of the box office receipts, that many of the pictures in the lower price brackets are licensed for a flat rental, that the pictures in each price bracket are sometimes untitled when the license agreement is made, and that many features are not definitely allocated to a price bracket until released; and denies that the question of proper allocation of pictures in price [fol. 3214] brackets is a continuous source of dispute between exhibitors and distributors.

23. Denies the allegations and each of them in Paragraph 111 of the Amended Complaint, except it admits that its license agreements specify the rental to be paid for each picture, the run on which the feature pictures are to be made available, the clearance, if any, which the licensed theatre shall have over competing theatres, the clearance, if any, which competing theatres shall have over the licensed

theatre, and sometimes state the minimum admission prices which the exhibitor agrees to charge.

24. Denies the allegations and each of them in Paragraph 118 of the Amended Complaint, except it admits that a code for the motion picture industry was adopted pursuant to the National Industrial Recovery Act.

25. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations or any of them in Paragraph 121 of the Amended Complaint, except it admits that direct or indirect subsidiaries of National enter into license agreements with distributors each season, that most of such license agreements cover only a single season, and that some of such license agreements may cover a period of two or more years.

26. Denies the allegations and each of them in Paragraph 123 of the Amended Complaint, except it avers that license agreements entered into by direct or indirect subsidiaries of National with distributors, covering one year or two or more years, vary with each particular distributor and for the precise terms thereof respectfully refers to the originals.

27. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 131 of the Amended Complaint, except it admits that direct or indirect subsidiaries of National operate first run theatres in the following towns:

Kansas City, Missouri,
Milwaukee, Wisconsin.

[fol. 3215] 28. Further answering, the defendant National Theatres Corporation denies that it or any corporation in which it owns any stock has a monopoly of or has attempted to monopolize the exhibition of motion pictures; denies that National has connived or conspired with any one to monopolize the production, distribution or exhibition of motion pictures, or to restrain trade and commerce in the production, distribution or exhibition of motion pictures, or has in any way violated the provisions of the Act of July 2, 1890.

29. Further answering, the defendant National Theatres Corporation denies each and every allegation, inference or implication in said Amended Complaint of any unlawful act,

conduct, combination, conspiracy or monopoly and denies that plaintiff is entitled to the relief prayed for in said Amended Complaint or to any of such relief, or to any relief whatsoever in the premises.

Wherefore, National Theatres Corporation, having fully answered the Amended Complaint herein, demands judgment dismissing the complaint, as amended and supplemented by the Amended Complaint, together with the costs and disbursements of this action, herein most wrongfully incurred.

Dwight, Harris, Koegel & Caskey, Solicitors for the Defendant, National Theatres Corporation, Office and P. O. Address: 100 Broadway, Borough of Manhattan, New York, N. Y.

(S.) John Fletcher Caskey, A Member of Said Firm.

New York, N. Y., November 14, 1940.

[fol. 3216] IN THE DISTRICT COURT OF THE UNITED STATES

[Title Omitted]

ANSWER OF TWENTIETH CENTURY-FOX FILM CORPORATION TO AMENDED AND SUPPLEMENTAL COMPLAINT

[fol. 3217] *To the Honorable the Judges of the District Court of the United States for the Southern District of New York:*

Twentieth Century-Fox Film Corporation (sometimes hereinafter referred to as "Fox"), by its solicitors, Dwight, Harris, Koegel & Caskey, for its Answer to the Amended and Supplemental Complaint (hereinafter referred to as the "Amended Complaint") herein:

1. Answering Paragraph 1 of the Amended Complaint, denies that it has violated, is violating, or is about to violate any section or sections of the Act of July 2, 1890, commonly known as the Sherman Act.

2. Denies the allegations and each of them in Paragraph 2 of the Amended Complaint, and avers that neither it nor any of its representatives has acted unlawfully or in viola-

tion of the Act of July 2, 1890, within the Southern District of New York or elsewhere.

3. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations [fol. 3218] or any of them in Paragraphs 3, 4, 5, 6, 9, 10, 11, 14, 16(d), 16(f), 17(d), 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 105, 106, 131, 132, and 134 of the Amended Complaint.

4. Answering Paragraph 7(a) of the Amended Complaint, denies that Fox is engaged in the business of exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States, in foreign countries or elsewhere, except it admits that it owns all of the common stock of Roxy Theatres, Inc., which owns and operates the Roxy Theatre in New York, N. Y., and that it owns 42% of the capital stock of National Theatres Corporation, direct and indirect subsidiaries of which are engaged in the business of exhibiting motion pictures.

Answering Paragraph 7(b) of the Amended Complaint, denies that National Theatres Corporation is a holding company for the theatre interests of Fox.

5. Answering the allegations in Paragraph 8 of the Amended Complaint, denies that Fox is an exhibitor of motion pictures and that National Theatres Corporation is a producer of motion pictures and protests the use of the appellation "producer-exhibitor defendant" to describe either of them.

6. Answering the allegations in Paragraph 15(b) of the Amended Complaint, denies that the term "major producer" is accurately defined in said paragraph and avers that said term is relative and could be applied to any of a number of producers who at the particular time might generally be regarded as the principal or more important producers.

7. Denies the allegations and each of them in Paragraphs 15(c), 15(e), 16(c), 17(h), 17(o), 17(s), 17(t), 87, 101, 102, [fol. 3219] 103, 109, 110, 112, 113, 115, 116, 119, 120, 125, 127,

128, 129, 130, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, and 187 of the Amended Complaint.

8. Answering the allegations of Paragraph 16(b) of the Amended Complaint, denies the term "major distributor" is accurately defined in said paragraph and avers that said term is relative and could be applied to any of a number of distributors who at the particular time might generally be regarded as the principal or more important distributors.

9. Denies the allegations and each of them in Paragraph 16(g) of the Amended Complaint, except it admits that the term "block booking" is sometimes applied to the simultaneous licensing of a number of motion pictures, most of which are to be produced in the future.

10. Denies the allegations and each of them in Paragraphs 17(b) and 17(c) of the Amended Complaint, except it admits that the term "affiliated theatre" may be used where the policy under which a theatre is operated and the licensing of pictures for exhibition in such theatre are both subject to control actually exercised by a defendant.

11. Denies the allegations and each of them in Paragraph 17(e) of the Amended Complaint, except it admits that the theatres which by contract with Fox have the right to the first run of pictures distributed by it in the communities where such theatres are located are sometimes called "first run theatres."

12. Denies the allegations and each of them in Paragraphs 17(f) and 17(g) of the Amended Complaint, except it admits that a group of two or more theatres owned, controlled or managed by the same interests are sometimes referred to as a "circuit" and that a theatre in such group is sometimes referred to as a "circuit theatre."

[fol. 3220] 13. Answering the allegations in Paragraph 17(i) of the Amended Complaint, avers that the motion picture season of Fox begins on August 1 of one year and ends on July 31 of the following year.

14. Answering the allegations in Paragraphs 17(j), 17(k), 17(l), 17(m), 17(n), 17(p), 17(q) and 17(r), admits that

the terms referred to in these paragraphs are sometimes used in the motion picture industry as therein defined.

15. Denies the allegations and each of them in Paragraph 38 of the Amended Complaint, except it admits that Fox was incorporated under the name of Fox Film Corporation on February 1, 1915, that the debt structure of Fox was voluntarily adjusted with the consent of its creditors, security holders and stockholders in the summer of 1933, that in 1935 Fox acquired the property, business and assets of Twentieth Century Pictures, Inc., and that in 1935 the name Fox Film Corporation was changed to Twentieth Century-Fox Film Corporation.

16. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations or any of them in Paragraph 39 of the Amended Complaint, except it avers that the feature pictures produced by Fox during the following seasons were as stated below:

1930-1931—48
1931-1932—46
1932-1933—41
1933-1934—46
1934-1935—40
1935-1936—52
1936-1937—52
1937-1938—49
1938-1939—55

17. Denies the allegations and each of them in Paragraph 40 of the Amended Complaint, except it admits that Movie-
[fol. 3221] tonews, Inc., is a subsidiary of Fox, and avers that for the season 1930-1931 Movietonews, Inc., released no short subjects and that, for the seven-year period ending 1937-1938, the average number of short subjects produced by Movietonews, Inc., was 23, and that, for the eight year period ending 1937-1938, the average number of newsreels produced by it for release in the United States was 158.

18. Denies the allegations and each of them in Paragraph 41 of the Amended Complaint, and avers that its pictures are distributed in the State of Louisiana by Twentieth Century-Fox Distributing Corporation, which maintains an office in New Orleans, Louisiana, in the State of Texas by Twentieth Century-Fox Corporation of Texas, which main-

tains an office in Dallas, Texas, and throughout the rest of the United States by Twentieth Century-Fox Film Corporation which maintains branch offices in 29 cities throughout the United States, and that during the 1936-1937 season it distributed 64 feature pictures, including 4 reissues.

19. Denies the allegations and each of them in Paragraph 42 of the Amended Complaint, except it admits that it acquired approximately one-third of the common stock of West Coast Theatres, Inc. in August, 1925, and that in March, 1928, it acquired all the stock of Wesco Corporation.

20. Denies the allegations and each of them in Paragraph 43 of the Amended Complaint, except it admits that Wesco Corporation adjusted its capital structure in 1934 by voluntary agreement among its creditors and stockholders, pursuant to which The Chase National Bank of the City of New York acquired 58% of the stock of Wesco and Fox retained 42%; that the name of Wesco Corporation was thereafter changed to National Theatres Corporation; that The Chase National Bank of the City of New York still retains 58% of the stock of National Theatres Corporation; that direct and indirect subsidiaries of National Theatres Corporation operate theatres in the middle and far western parts of the United States; and except it admits [fol. 3222] that The Chase National Bank of the City of New York is and for some years has been a stockholder in Fox.

21. Answering the allegations in Paragraph 44 of the Amended Complaint admits that Fox owns all the common stock of Roxy Theatres, Inc., which operates the Roxy Theatre in New York, N. Y.

22. Denies the allegations and each of them in Paragraph 45 of the Amended Complaint, except it admits that the Roxy Theatre is operated as stated in paragraph 21 above of this Answer and that, as of November 2, 1940, direct or indirect subsidiaries of National Theatres Corporation operated theatres as indicated by the following tabulation:

City	*No. of Theatres*
Denver, Colorado,	5
Detroit, Michigan	1
Kansas City, Missouri	3
Los Angeles, California	6
Milwaukee, Wisconsin	3

City	*No. of Theatres*
Portland, Oregon	3
San Francisco, California	4
Seattle, Washington	6

State	*No. of Theatres*
Arizona	6
California	212
Colorado	34
Idaho	11
Illinois	20
Iowa	6
Kansas	56
Michigan	5
Missouri	37
Montana	19
Nebraska	8
New Mexico	6
Oregon	9
Utah	2
Washington	25
Wisconsin	48
Wyoming	12

23. Denies the allegations and each of them in Paragraph 100 of the Amended Complaint, except it admits that during the period between 1919 and 1930 the cost of production had [fol. 3223] mounted steadily, that the cost of production was accelerated by the introduction of sound in motion pictures, and that some of the best feature pictures produced by Fox cost as much as $500,000 or more each to produce.

24. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations or any of them in Paragraph 104 of the Amended Complaint, except it admits that during the period from January 1, 1933, to June 30, 1939, it made 258 loans of stars, feature players, directors, writers, camera men and other production talent to producers.

25. Denies the allegations and each of them in Paragraph 107 of the Amended Complaint, except it admits that many of its license contracts contain the terms under which the features licensed under that contract are to be exhibited

over a period of one year or more, that one license agreement with an exhibitor may cover all feature pictures to be released during the motion picture season covered by the license agreement or a lesser number to be selected from the whole, that production programs are subject to change, and that some of its licenses have been negotiated prior to the commencement of the motion picture season to be covered by the license and before any of the features covered by the license had been released.

26. Denies the allegations and each of them in Paragraph 108 of the Amended Complaint, except it admits that the quality of feature pictures varies, that feature pictures are placed in different price groups in the license agreements, that some of its pictures gross more than $1,000,000 and may play in more than 10,000 theatres in the United States, that some of its pictures may gross $200,000 or less and may play in no more than 5,000 theatres in the United States, that many of the features placed in the top price brackets in the license agreements contain terms based upon a percentage of the box office receipts, that many of the pictures in the lower price brackets are licensed for a flat rental, that the pictures in each price bracket are sometimes untitled when the license agreement is made, and [fol. 3224] that many features are not definitely allocated to a price bracket until released.

27. Denies the allegations and each of them in Paragraph 111 in the Amended Complaint, except it admits that its license agreements usually specify the rental to be paid for each picture, the run on which feature pictures are to be made available to the exhibitor, the clearance, if any, which the licensed theatre shall have over competing theatres, the clearance, if any, which competing theatres shall have over the licensed theatre, and sometimes state the minimum admission prices which the exhibitor agrees to charge when exhibiting Fox pictures.

28. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 114 of the Amended Complaint, except it avers that as long as Fox has been a producer and distributor of motion pictures it has licensed its pictures on a so-called "run" basis.

29. Denies the allegations and each of them in Paragraph 117 of the Amended Complaint, except it admits that it

was a defendant in the case entitled *Youngclaus v. Omaha Film Board of Trade*, reported in 60 F. (2d) 538, and for the text of the decision and judgment therein respectfully refers to the original.

30. Denies the allegations and each of them in Paragraph 118 of the Amended Complaint, except it admits that a code for the motion picture industry was adopted pursuant to the National Industrial Recovery Act.

31. Denies the allegations and each of them in Paragraph 121 of the Amended Complaint, except it admits that most of its license agreements with exhibitors cover only the pictures to be released during a single season, and that it has entered into license agreements with exhibitors covering more than one season.

[fol. 3225] 32. Denies the allegations and each of them in Paragraph 122 of the Amended Complaint, except it avers that all license agreeemnts are advantageous to any theatre, whether for one or more reasons, since thereby the exhibitor is assured of product for that season or seasons.

33. Denies the allegations and each of them in Paragraph 123 of the Amended Complaint, except it avers that its license agreements with exhibitors covering one or two or more years vary with each exhibitor and for the precise terms thereof respectfully refers to the originals.

34. Denies the allegations and each of them in Paragraph 124 of the Amended Complaint, except it admits that, in licensing its films to exhibitors who own more than one theatre, the terms with respect to those theatres may be negotiated at the same time and except it admits and avers that every exhibitor in negotiating for pictures attempts to secure the terms most favorable to him.

35. Denies the allegations and each of them in Paragraph 126 of the Amended Complaint, except it admits that a number of prints of each feature picture is delivered to each exchange, the number varying with the needs of each particular exchange, that the prints are shipped to various theatres served by each individual exchange in accordance with contracts, that prints are returned to the exchange after use, that pictures are sometimes privately screened on or shortly after arrival for the benefit of employees

and exhibitors, and that if a picture is rejected by an exhibitor under his contract such picture may offered or licensed to another exhibitor.

36. Answering Paragraph 133 of the Amended Complaint, it denies that the personnel necessary to the production of a motion picture is usually drawn across state lines.

37. Answering Paragraph 135 of the Amended Complaint, it denies that all shipments of positive films to film exchanges are made across state lines.

[fol. 3226] 38. Answering Paragraph 136 of the Amended Complaint, states that it is without knowledge or information sufficient to form a belief as to the other defendants herein and it avers that the exhibition season of Fox begins on August 1 of each year.

39. Answering Paragraph 138 of the Amended Complaint, denies that all shipments of positive films are made across state lines.

40. Answering Paragraph 139 of the Amended Complaint, denies that when films distributed by it are worn out they are shipped or returned to its laboratories for scrapping or that such shipments necessarily cross state lines, or that the final destination is New York City.

41. Further answering the defendant Twentieth Century-Fox Film Corporation denies that it has a monopoly of or has attempted to monopolize the production of motion pictures; denies that Fox has a monopoly of or has attempted to monopolize the distribution of motion pictures; denies that Fox or any corporation in which it owns any stock has a monopoly of or has attempted to monopolize the exhibition of motion pictures; denies that Fox has connived or conspired with anyone to monopolize the production, distribution or exhibition of motion pictures, or to restrain trade and commerce in the production, distribution or exhibition of motion pictures, or has in any way violated the provisions of the Act of July 2, 1890. Fox further avers that it has produced and distributed motion pictures in free and open competition with the other defendants herein and with numerous other producers and distributors and that Roxy Theatres, Inc. and the subsidiaries and affiliates of National Theatres Corporation have exhibited motion pictures in free and open competition with other exhibitors.

42. Further answering the defendant Twentieth Century-Fox Film Corporation denies each and every allegation, inference or implication in said Amended Complaint of any unlawful act, conduct, combination, conspiracy or monopoly and denies that plaintiff is entitled to the relief prayed [fol. 3227] for in said Amended Complaint or to any of such relief, or to any relief whatsoever in the premises.

Wherefore, Twentieth Century-Fox Film Corporation, having fully answered the Amended Complaint herein, demands judgment dismissing the complaint, as amended and supplemented by the Amended Complaint, together with the costs and disbursements of this action, herein most wrongfully incurred.

Dwight, Harris, Koegel & Caskey, Solicitors for the Defendant Twentieth Century-Fox Film Corporation, Office and P. O. Address: 100 Broadway, Borough of Manhattan, New York, N. Y.

S.) John Fletcher Caskey, A member of said firm.
New York, N. Y., November 14, 1940.

[fol. 3228] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER OF LOEW'S INCORPORATED TO PETITIONER'S AMENDED AND SUPPLEMENTAL COMPLAINT—Filed November 14, 1940

Defendant, Loew's, Incorporated, by J. Robert Rubin and Davis, Polk, Wardwell, Gardiner & Reed, its solicitors, answers the amended and supplemental complaint herein, sometimes hereinafter referred to as the complaint, as follows:

1. Admits that the complaint was filed and these proceedings were instituted under Section 4 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, against the defendants named in the complaint, but this defendant denies that it, either individually, or jointly with any other defendant or defendants, has violated, now is violating or intends to vio-

late any provision of said Act, either as alleged in the complaint, or in any other manner.

[fol. 3229] 2. Denies each allegation of Paragraph 2 of the complaint insofar as the same relates to this defendant, and states that it is without knowledge or information sufficient to form a belief as to the truth of said allegations insofar as the same relate to any other defendant.

3. Answers the respective subdivisions of Paragraph 3 of the complaint as follows:

(a) States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of subdivision (a), except that it admits that Paramount Pictures, Inc., or subsidiaries thereof, are engaged in the business of producing, distributing and exhibiting motion pictures; and

(b) States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of subdivision (b).

4. Denies each allegation of Paragraph 4 of the complaint, except that it admits that Loew's, Incorporated, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at No. 1540 Broadway, New York, New York; that it is engaged in the business of producing motion pictures and of distributing motion pictures in various parts of the United States, and that subsidiaries of Loew's, Incorporated, are engaged in the business of exhibiting motion pictures in various parts of the United States.

[fol. 3230] 5. Answers the respective subdivisions of Paragraph 5 of the complaint as follows:

(a) States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of subdivision (a), except that it admits that Radio-Keith-Orpheum Corporation, or subsidiaries thereof, are engaged in the business of producing, distributing and exhibiting motion pictures;

(b) States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of subdivisions (b) to (e), inclusive.

6. Answers the respective subdivisions of Paragraph 6 of the complaint as follows:

(a) States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of subdivision (a), except that it admits that Warner Bros. Pictures, Inc., or subsidiaries thereof, are engaged in the business of producing, distributing and exhibiting motion pictures;

(b) States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of subdivision (b), except that it admits that Vitagraph, Inc., is engaged in the business of distributing motion pictures; and

(c) States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of subdivision (c).

[fol. 3231] 7. Answers the respective subdivisions of Paragraph 7 of the complaint as follows:

(a) States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of subdivision (a), except that it admits that Twentieth Century-Fox Film Corporation, or subsidiaries thereof, are engaged in the business of producing, distributing and exhibiting motion pictures; and

(b) States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of subdivision (b).

8. Admits the allegations of Paragraph 8 of the complaint.

9. Answers the respective subdivisions of Paragraph 9 of the complaint as follows:

(a) States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of subdivision (a), except that it admits that Columbia Pictures Corporation, or subsidiaries thereof, are engaged in the business of producing and distributing motion pictures; and

(b) States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of subdivisions (b) and (c).

10. Answers the respective subdivisions of Paragraph 10 of the complaint as follows:

[fol. 3232] (a) States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of subdivision (a), except that it admits that Universal Corporation, or subsidiaries thereof, are engaged in the business of producing and distributing motion pictures; and

(b) States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of subdivisions (b) to (d), inclusive.

11. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 11 of the complaint, except that it admits that United Artists Corporation is engaged in the business of distributing motion pictures.

12. Admits the allegations of Paragraphs 12, 13 and 14 of the complaint.

13. Answers the respective subdivisions of Paragraph 15 of the complaint as follows:

(a) Denies each allegation of subdivision (a) and alleges that a producer is any individual, partnership, unincorporated association or corporation which produces motion pictures;

(b) Denies each allegation of subdivisions (b) and (c);

(c) Admits the allegations of subdivision (d);

(d) Denies each allegation of subdivision (e); and

[fol. 3233] (e) Admits the allegations of subdivisions (f) and (g).

14. Answers the respective subdivisions of Paragraph 16 of the complaint as follows:

(a) Denies each allegation of subdivision (a) and alleges that a distributor is any individual, partnership, unincor-

porated association or corporation which licenses motion pictures for exhibition and distributes the positive prints of such motion pictures to exhibitors;

(b) Denies each allegation of subdivisions (b) and (c);

(c) Denies each allegation of subdivision (d), except that it admits that the term "State Rights Distributor" is sometimes used in the industry generally to designate a distributor which does not operate a system of national exchanges but licenses the exhibition of motion pictures in a state or territory;

(d) Admits the allegations of subdivision (e) except that it denies that an exchange is maintained for the purpose of soliciting license agreements and alleges that it is maintained for the purpose of soliciting applications for licenses; and

(e) Denies each allegation of subdivisions (f) to (g), inclusive.

15. Answers the respective subdivisions of Paragraph 17 of the complaint as follows:

(a) Denies each allegation of subdivision (a) and alleges that an exhibitor is any individual, partnership, unincor- [fol. 3234] porated association or corporation engaged in the public exhibition of motion pictures in a theatre or theatres for profit;

(b) Denies each allegation of subdivisions (b) and (c);

(c) States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of subdivision (d);

(d) Denies each allegation of subdivision (e), and alleges that a first run theatre is a theatre which, by virtue of a contract between the exhibitor and a distributor, exhibits motion pictures licensed by such distributor to such exhibitor on their first run or showing in the particular area in which the theatre is located;

(e) Denies the allegations of subdivision (f), and alleges that a theatre circuit is a group of theatres affiliated together either by stock ownership, common ownership or common buying or whose licenses are negotiated by a buying combine or common buying agent;

(f) Admits the allegations of subdivisions (g) to (i), inclusive;

(g) Denies the allegations of subdivision (j), except that it admits that the term "release" is used in the motion picture industry to designate either a motion picture or the making of prints of a motion picture available for public exhibition in a theatre or theatres;

(h) Admits the allegations of subdivision (k);

(i) Denies each allegation of subdivision (l) and alleges [fol. 3235] that a trade showing is an exhibition of a feature at a theatre or projection room for the benefit of exhibitors generally;

(j) Admits the allegations of subdivision (m);

(k) Denies each allegation of subdivision (n) and alleges that a road show is an exhibition at a theatre where a majority of the main floor seats for each evening performance are reserved and sold at an admission price of not less than one dollar;

(l) Admits the allegations of subdivision (o), and alleges that the term is also used to mean a city in which the best motion pictures are regularly given their first run exhibition, and gross their largest returns, in the district in which such city is located, or a city in which a number of companies distributing motion pictures maintain exchanges;

(m) Admits the allegations of subdivisions (p) to (r), inclusive;

(n) Denies each allegation of subdivision (s), and alleges that clearance is the period of time fixed by agreement between a distributor and an exhibitor, prior to the expiration of which a feature licensed for prior exhibition in a theatre may not be exhibited in another theatre or theatres; and

(o) Denies each allegation of subdivision (t), and alleges that a zone is a specified geographical area.

16. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraphs 18 to 26, inclusive, and any subdivisions thereof.

[fol. 3236] 17. Admits the allegations of Paragraphs 27 to 31, inclusive, of the complaint.

18. Admits that it operates the number of theatres located in the cities and states referred to in subdivisions (a) and (b) of Paragraph 32 of the complaint, except that it denies that it operates any theatre in Denver, Colorado or in San Francisco, California, that it operates more than three theatres in the City of Washington, which is co-extensive with the District of Columbia, and that it operates in the State of Maryland more than two theatres, both located in the City of Baltimore, Maryland.

19. Admits the allegations of Paragraph 33 of the complaint, except that it denies that the name of the merged company was Metro-Goldwyn Pictures Corporation, and alleges that the name of the merged company was Metro-Goldwyn-Mayer Corporation, and that Metro-Goldwyn-Pictures Corporation was a subsidiary of this defendant which held the capital stock of said Metro-Goldwyn-Mayer Corporation, and that it denies the allegation of the fifth sentence of said Paragraph and alleges that from 1924 to December 31, 1937, Metro-Goldwyn-Mayer Corporation produced pictures for this defendant.

20. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34 of the complaint as to the total number of features produced in the industry; denies each allegation [fol. 3237] thereof insofar as it relates to it, and alleges that during the nine-year period ending with the 1938-39 season it produced feature pictures as follows:

Season	Features Produced by Loew's
1930-31	45
1931-32	39
1932-33	36
1933-34	46
1934-35	41
1935-36	42
1936-37	43
1937-38	38
1938-39	47

21. Admits the allegations of Paragraph 35 of the complaint.

22. Admits the allegations of Paragraph 36 of the complaint, except that it denies that during the 1936-37 season

it distributed ten more features than it produced, and, alleges that during the 1936-37 season it produced forty-three features and distributed fifty-two features, including four reissues.

23. Admits the allegations of Paragraph 37 of the complaint.

24. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraphs 38 to 86, inclusive, of the complaint.

[fol. 3238] 25. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 87 of the complaint, except that it admits that it is a party to certain agreements with respect to certain theatres, and that other exhibitors, including subsidiaries of certain other defendants herein, are also parties to such agreements.

26. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraphs 88 and 89 of the complaint.

27. Admits the allegations of Paragraph 90 of the complaint, except that it states that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that in the early stages of motion picture production films possessed entertainment value for the public merely because of the novelty of watching figures and objects in motion projected on a screen.

28. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraphs 91 to 95, inclusive, of the complaint.

29. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 96 of the complaint, except that it admits that [fol. 3239] after 1912 the film of 1000 feet was displaced by the feature picture of five reels or more and that during such period the motion picture art had been going forward.

30. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 97 of the complaint.

31. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation

of Paragraph 98 of the complaint, except that it admits that First National Exhibitors Circuit, an association of exhibitors, was organized in or about the year 1917.

32. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 99 of the complaint.

33. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 100 of the complaint, except that it admits that by 1930 this defendant was engaged in the production, distribution and exhibition of motion pictures; that the motion pictures which it produced were distributed by it throughout the United States; that Paramount, Warner, Fox and RKO, either directly or through subsidiaries, each also was engaged severally in the production, distribution [fol. 3240] and exhibition of motion pictures and that each severally distributed throughout the United States the motion pictures so produceed by it; that during the period from 1919 to 1930 feature picture production costs had mounted steadily and that in or about 1927 the introduction of sound films accelerated this increase in the costs of production to such an extent that an outstanding feature sound film in some cases was costing as much as $500,000.00 or more to produce.

34. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 101 of the complaint, except that it admits that since 1930 it has distributed features produced by producers other than the defendant herein pursuant to arrangements made preceding the production of such features; that such arrangements sometimes have included the use of equipment owned by, or production talent under contract to this defendant, and that such arrangements sometimes have included partial financing of the production by this defendant.

35. Admits the allegations of the first clause of Paragraph 102 of the complaint; denies the allegations of the second clause of said Paragraph insofar as the same relate to this defendant, and states that it is without knowledge or information sufficient to form a belief as to the truth of said allegations insofar as the same relate to any other defendant.

36. States that it is without knowledge or information [fol. 3241] sufficient to form a belief as to the truth of any allegation of Paragraph 103 of the complaint insofar as the same relates to any other defendant and denies each allegation thereof insofar as it relates to this defendant, except that it admits that this defendant has from time to time made available to other producers, including independent producers as well as other defendants herein, its stars, feature players, directors and other personnel, and its sets, scenery, and other technical equipment necessary for the production of motion pictures.

37. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 104 of the complaint insofar as the same relates to any other defendant in this action; denies each allegation thereof insofar as it relates to this defendant, and alleges that, from about 1933 to about August 30, 1939, it has loaned stars, feature players, directors, writers, cameramen and other production talent, under contract to it, to other producers of motion pictures, some of which are defendants in this action.

38. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 105 of the complaint.

39. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation [fol. 3242] of Paragraph 106 of the complaint, except that it admits that its motion picture films in the early stages of motion picture distribution were well adapted to the method of licensing then employed in the industry; that its motion picture films today are well adapted to the method of licensing now employed by it, and that then as now certain motion picture films were licensed without prior trade showings and in groups for delivery at fairly regular intervals over a period of time.

40. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 107 of the complaint insofar as the same relates to any other defendant, and denies the same insofar as it relates to this defendant, except that it admits that some of its licenses today contain the terms on which all or several of its features are to be exhibited under copy-

right over a period of time, as and when released; that some of its licenses provide for the exhibition under copyright of a minimum number of features out of the maximum number of features specified in the license, and that some of its licenses are negotiated prior to the commencement of the exhibition season.

41. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 108 of the complaint insofar as the same relates to any other defendant; admits the allegations of the [fol. 3243] first three sentences and denies the allegations of the last two sentences of said Paragraph insofar as the same relate to it, and alleges that its pictures in each bracket are usually untitled and unidentified when licensed but are allocated to a price bracket when they are about to be released.

42. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 109 of the complaint insofar as the same relates to any other defendant and denies each allegation thereof insofar as it relates to this defendant, except that it admits that by free, voluntary and separate negotiations with its prospective customers it endeavors to license to each of them as many features as possible, consistent with its best business judgment.

43. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 110 of the complaint.

44. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 111 of the complaint insofar as the same relates to any other defendant and admits the allegations of said Paragraph insofar as the same relate to this defendant.

45. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 112 of the complaint.

[fol. 3244] 46. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 113 of the complaint insofar as the same relates to any other defendant, and denies each allega-

tion thereof insofar as it relates to this defendant, except that it admits that in licensing the exhibition of its pictures to a subsequent run exhibitor it does not violate the terms of its license contract with any exhibitor who has licensed a run of its pictures prior to that of said subsequent run exhibitor, and that in the licensing of its pictures it does not employ auction block methods.

47. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegations of Paragraph 114 of the complaint.

48. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 115 of the complaint, except that it admits that from time to time since about 1915 to about 1931 many exhibitor and distributor interests conceded that uniform clearances were in many respects desirable and that efforts were made from time to time, at the request of exhibitor interests, to eliminate differences in clearance.

49. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 116 of the complaint insofar as the same relates to any other defendant; denies each allegation thereof [fol. 3245] insofar as it relates to this defendant, except that it admits that with the knowledge and acquiescence of the plaintiff, this defendant participated in conferences to establish the basis for clearance schedules by voluntary agreement of all parties affected.

50. Admits that the United States District Court for the District of Nebraska rendered a decision on July 2nd, 1932, in a case entitled Youngclaus v. Omaha Film Board of Trade et al. (reported in 60 F. (2d) 538) in which Metro-Goldwyn-Mayer Distributing Corporation was a party defendant, to the effect that the agreement among distributors which is therein set forth restrained trade in violation of the Sherman Anti-Trust Act; states that it is without knowledge or information sufficient to form a belief as to the truth of any other allegation of Paragraph 117 of the complaint insofar as the same relates to any other defendant; denies each other allegation thereof insofar as it relates to this defendant, except that it admits and alleges that since 1932 it has refrained from participating in any negotiations with respect to uniform clearance and zoning

except as admitted in its answer to Paragraph 118 of the complaint.

51. Denies the allegations of Paragraph 118 of the complaint except that it admits that in 1933 the National Industrial Recovery Act was passed and that pursuant thereto a Code of Fair Competition for the Motion Picture Industry was duly promulgated; that pursuant to the express provisions of that Act this defendant, with others [fol. 3246] engaged in the motion picture industry, was bound by the decisions of local Clearance and Zoning Boards established pursuant to said Code; that a Clearance and Zoning Schedule was prepared and adopted for the Los Angeles Exchange Territory; that other such schedules were in preparation by local Clearance and Zoning Boards in other sections of the United States but that these, as well as the schedule for the Los Angeles Exchange territory, were terminated with the declaration by the Supreme Court of the illegality of the National Industrial Recovery Act, and denies that since May, 1935, this defendant has made any further effort to establish any uniform clearance and zoning, either by express agreement with other distributors, or otherwise.

52. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraphs 119 and 120 of the complaint insofar as the same relates to any other defendant or any theatre circuit, and denies each allegation thereof insofar as it relates to this defendant, except that it admits that it attempts by individual and separate negotiations to obtain the same clearance from each distributor from which it licenses motion pictures for exhibition in theatres operated by its subsidiaries.

53. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 121 of the complaint insofar as the same relates to any other defendant and denies each allegation [fol. 3247] thereof insofar as it relates to this defendant, except that it admits that it has granted licenses for more than one year and that the film rental from a single such license has exceeded $2,000,000.00, and it alleges that in recent years it has entered into no long term license for the exhibition of its pictures.

54. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 122 insofar as the same relates to any other defendant and denies each allegation thereof insofar as it relates to this defendant, except that it admits that its licenses for a period of more than one season, as well as its licenses for a year or less, are advantageous to its licensees, and admits that some of the licenses entered into by this defendant, either as licensee or as licensor, contain provisions that some of the terms are to be reviewed and renegotiated annually before the beginning of the motion picture seasons covered by said license.

55. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 123 of the complaint insofar as the same relates to any other defendant; denies each allegation thereof insofar as it relates to it, except that it admits and alleges that certain contracts for more than one year, like contracts for one year or less, provide for the deduction of the cost of vaudeville performances before the calculation [fol. 3248] of film rental or for the deduction of the cost of a second feature where double features are used before calculating film rental, that in one or two instances contracts entered into by it have provided for after acquired theatres; that said contracts have expired and that none such are now in existence.

56. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 124 of the complaint insofar as the same relates to any other defendant and denies each allegation thereof insofar as it relates to this defendant, except that it admits that an exhibitor, in negotiating for a license agreement, seeks to secure the most favorable terms for the theatre or theatres for which he is negotiating.

57. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 125 of the complaint insofar as the same relates to any other defendant and denies each allegation thereof insofar as it relates to this defendant.

58. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 126 of the complaint insofar as the same

relates to any other defendant, denies each allegation thereof insofar as it relates to this defendant, except that it admits the allegation of the first, fourth and fifth sentences of said Paragraph 126 insofar as the same relate to [fol. 3249] it, and admits that its pictures are frequently screened on or shortly after their arrival at the exchange for the benefit of the trade.

59. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 127 of the complaint insofar as the same relates to any other defendant; admits the allegations thereof insofar as they relate to this defendant and alleges that the quality of motion picture entertainment available is not the only factor affecting admission prices.

60. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 128 of the complaint insofar as it relates to any other defendant; denies each allegation thereof insofar as it relates to this defendant, except that it admits that admission prices tend to vary with the run on which an exhibitor licenses the motion pictures distributed by this defendant.

61. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraphs 129 and 130 of the complaint insofar as the same relates to any other defendant and denies each allegation thereof insofar as it relates to this defendant.

62. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 131 of the complaint insofar as the same re- [fol. 3250] lates to any other defendant and denies each allegation thereof insofar as it relates to this defendant except that it admits that with respect to the 1st run theatres operated by its subsidiaries located in the cities referred to in Paragraph 17 (d) of the complaint, approximately 95% or more of the feature pictures exhibited by such theatres were released by the distributor defendants, a large percentage of the pictures so exhibited being released by this defendant itself.

63. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 132 of the complaint.

64. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 133 of the complaint, except that it admits the allegations contained in the first sentence of said Paragraph 133, and admits that the personnel necessary to the production of a motion picture is usually assembled at studios in California, where most of the pictures are made.

65. Denies each allegation of Paragraph 134 of the complaint insofar as the same relates to this defendant except that it states that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of said Paragraph insofar as the same relates to any other defendant, except that it states that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that approximately two billion feet of negative stock celluloid film are used in the production of motion [fol. 3251] pictures annually, practically all of which is manufactured at plants located in the States of New York and New Jersey.

66. Denies each allegation of Paragraph 135 of the complaint insofar as the same relates to this defendant and states that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of said Paragraph insofar as the same relates to any other defendant, except it admits the allegations contained in the first and third sentences of said Paragraph 135 and admits and alleges that in the case of Loew's Incorporated positive prints are made from negatives at its laboratories located in California and that usually between 200 and 400 positive prints are made for each feature picture.

67. Denies each allegation of Paragraph 136 of the complaint insofar as the same relates to this defendant and states that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of said Paragraph insofar as the same relates to any other defendant, except that it admits that in the spring or early summer of each year, this defendant announces its anticipated program for the coming exhibition season, such announcement describing the literary properties, actors, actresses, producers and directors available to it for production of motion pictures and such other pertinent material as may be available, and admits that plans are made for the pro-

[fol. 3252] duction and release of the pictures at as nearly regular intervals throughout the exhibition season as may be, such year generally commencing on September 1st of each year.

68. Denies each allegation of Paragraph 137 of the complaint insofar as the same relates to this defendant and states that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of said Paragraph insofar as the same relates to any other defendant, except that it admits and alleges that Loew's Incorporated, through its sales representatives who work out of its home office and film exchanges, solicits exhibitors to execute applications for license agreements covering exhibition of pictures of the coming season and in some cases of prior seasons and admits that each feature and short subject is copyrighted under the copyright laws of the United States by Loew's Incorporated, and the solicited applications as signed by the exhibitors are by the terms thereof and in fact, transmitted to the principal office of Loew's Incorporated, in New York City, where such applications are approved or rejected by it.

69. Admits the allegations of Paragraphs 138 and 139 of the complaint.

70. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 140 of the complaint, except that it admits that as to this defendant, the business of producing motion [fol. 3253] pictures involves the assemblage of personnel, property and material at the studios for the production of pictures and the making of negative film and positive prints at the studios; that the business of distributing motion pictures involves the solicitation of applications for licenses under copyright and the making of contracts for the future delivery over a period of time of films produced and to be produced; the transportation of the positive prints from the studios to its film exchanges throughout the United States; the continuous distribution of said films from the exchanges to and from motion picture theatres located in the areas served by the respective exchanges, the interchange of said films between an exchange and other exchanges of the same distributor located in other states of

the United States; and the shipment of said films from said exchanges throughout the United States to points within the State of New York or California for scrapping.

71. States that it is without knowledge or information sufficient to form a belief as to the truth of any allegation of Paragraph 141 of the complaint.

72. Denies each allegation of Paragraphs 142 to 187 of the complaint, both inclusive.

Wherefore, answering defendant above named demands judgment dismissing the petition, together with costs and [fol. 3254] disbursements of this action.

(sgd) J. Robert Rubin 1540 Broadway Borough of Manhattan City of New York

(sgd) Davis, Polk, Wardwell, Gardiner & Reed 15 Broad Street Borough of Manhattan City of New York Solicitors for above named defendant.

[fol. 3255]. In United States District Court

[Title omitted]

Answer of Paramount Pictures Inc. and Paramount Film Distributing Corporation to the Amended and Supplemental Complaint

Paramount Pictures Inc. (sometimes hereinafter referred to as "Paramount") and Paramount Film Distributing Corporation, by their solicitors, Simpson Thacher & Bartlett, for their answer to the amended and supplemental complaint herein (hereinafter referred to as the "amended complaint"):

1. Deny that they have violated, are violating or intend to violate, jointly or severally or otherwise, any section or sections of the act of July 2, 1890 commonly referred to as the "Sherman Anti-Trust Act", as alleged in paragraph "1" of the amended complaint, or in any other manner.

2. Deny each and every allegation contained in paragraph "2" of the amended complaint and allege that neither of them, nor any representative or representatives of either

of them, has or have acted unlawfully or is or are acting [fol. 3256] unlawfully or in violation of the Sherman Anti-Trust Act, either within the Southern District of New York or elsewhere.

3. State that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "4", "5", "6", "7", "8", "9", "10", "11", "12", "13" and "14" of the amended complaint.

4. Deny each and every allegation contained in paragraphs "15(b)", "15(c)", "15(e)", "15(f)", "15(g)", "16(b)", "16(c)", "16(d)", "16(e)", "16(f)" and "16(g)" of the amended complaint, and allege that the terms "major producer" and "major distributor" admit the inclusion of producers or distributors of motion pictures in addition to the defendants herein and in addition to those who produce pictures for release by the defendants herein or are controlled by a defendant herein.

5. Deny each and every allegation contained in paragraphs "17(b)", "17(c)", "17(d)", "17(e)", "17(f)", "17(g)", "17(h)", "17(i)", "17(j)", "17(l)", "17(n)", "17(o)", "17(p)", "17(q)", "17(r)", "17(s)" and "17(t)" of the amended complaint.

6. Admit that the allegations contained in paragraphs "18" and "19" of the amended complaint are substantially accurate, except that they deny that the definition of "Paramount" and the term "subsidiaries" when referring to Paramount, contained in the footnote on page 11 of the amended complaint, is an accurate definition thereof.

7. Deny each and every allegation contained in paragraph [fol. 3257] "20" of the amended complaint, except that they admit that Paramount and its predecessors from time to time acquired interests in producing and distributing companies.

8. State that they are without knowledge or information sufficient to form a belief as to the accuracy of the allegations contained in paragraph "21" of the amended complaint with respect to the number of features produced by the motion picture industry in the years therein named and admit that the number of features produced by Paramount for the years named is substantially accurate.

9. Admit the allegations contained in paragraphs "23" and "24" of the amended complaint, except that they allege that Paramount pictures are distributed through exchanges located in 31 cities and except that they deny that the acquisitions of theatres by Paramount in 1919 or in any other year were pursuant to any "program of theatre acquisition", as alleged in said paragraph "24".

10. Deny that the term "First-run Metropolitan Theatres" has any fixed or static meaning and hence state that they are without any knowledge or information sufficient to form a belief as to the accuracy of the figures with respect to "First-run Metropolitan Theatres" contained in paragraph "25" of the amended complaint, deny that more than a very few of the theatres referred to in said paragraph are operated, or that their operating policies are controlled by Paramount.

11. State that they are without knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs "27", "28", "29", "30", "31", [fol. 3258] "32", "33", "34", "35", "36", "37", "38", "39", "40", "41", "42", "43", "44", "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55", "56", "57", "58", "59", "60", "61", "62", "63", "64", "65", "66", "67", "68", "69", "70", "71", "72", "73", "74", "75", "76", "77", "78", "79", "80", "81", "82", "83", "84", "85" and "86" of the amended complaint.

12. Deny each and every allegation contained in paragraphs "87", "88" and "89" of the amended complaint, except that these defendants admit that there are situations in which Paramount is jointly interested financially in one or more theatres with one or more of the other defendants or with others who are not defendants in this action, and these defendants state that they are without knowledge or information sufficient to form a belief as to the existence of such situations or the number of such situations in which the other defendants, or one or more of them, may be interested financially but in which Paramount is not so interested.

13. Admit that the allegations contained in paragraphs "90" to "99", inclusive, of the amended complaint are substantially accurate, except that they deny that Adolph Zukor or Famous Players Company by 1916, or any other year,

exercised a dominating influence over the industry, as alleged in paragraph "97", and except that these defendants deny any inference which may be drawn or intended to be drawn from the allegations contained in said paragraphs "90" to "99", inclusive, that competition in the moving picture industry is not and has not always been free and open, and that there is a limited source of supply of feature pictures, or of first class feature pictures, and they deny [fol. 3259] that any limited source that may exist is the result of any agreement, combination or conspiracy among the defendants or any of them, or of any wrongful or illegal act on the part of these defendants, or either of them, or anyone acting on their behalf.

14. Deny each and every allegation contained in paragraph "100" of the amended complaint and deny any inference which may be drawn or intended to be drawn therefrom that in 1919, or at any other time, Famous Players-Lasky Company entered upon a "program of theatre expansion" or that its theatre acquisitions or the theatre acquisitions of Paramount were or are illegal in any respect or were intended to violate or did violate the provisions of any law.

15. State that they are without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "101" of the amended complaint, except that they deny upon information and belief that they or the other defendants individually or collectively have control of the distribution of feature pictures produced in the United States at a cost of more than $250,000.

16. Deny each and every allegation contained in paragraphs "102" and "103" of the amended complaint, except that they admit that equipment and technical and artistic talent necessary to produce profitable feature pictures have steadily grown more costly to producers and except that they admit that Paramount has on occasions hired equipment and technical and artistic talent from other producers [fol. 3260] and has rented such equipment and technical and artistic talent to other producers including producers who are not defendants herein, and allege that such transactions have been upon the basis of individual bargains made at the time of each such hiring or each such renting.

17. State that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "104" of the amended complaint and as to the accuracy of the figures set forth in said paragraph.

18. State that they are without knowledge or information sufficient to form a belief as to the truth of the allegations and the computations and percentages contained in paragraph "105" of the amended complaint.

19. State that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "106" of the amended complaint.

20. Deny each and every allegation contained in paragraph "107" of the amended complaint, except that they admit that many of their license agreements ordinarily contain the terms on which the feature pictures licensed are to be exhibited over a period of one year or more; that their license agreements sometimes cover all of the features released or to be released during a one-year period, or a lesser number selected or to be selected from all released as and when released; that license agreements are sometimes negotiated prior to the commencement of the motion picture season before any of the feature pictures covered thereby [fol. 3261] have been released, and frequently their license agreements are negotiated after the motion picture season has commenced and many of the feature pictures covered thereby have been produced, and that production programs announced in advance of the production season are necessarily subject to change during the period of production.

21. Deny each and every allegation contained in paragraph "108" of the amended complaint, except that they admit that the quality of feature pictures as box-office attractions necessarily varies widely, even with respect to those released by the same company; that they are sometimes priced in various brackets in the license agreements of these defendants in accordance with their anticipated quality; that features in one price bracket may have license terms based upon a percentage of box-office receipts, sometimes against a guaranteed figure, and that pictures in another bracket may be licensed for a "flat rental;" that feature pictures in various price brackets are sometimes untitled when the license agreement is made and that some

features are not definitely allocated to a price bracket until released.

22. Deny each and every allegation contained in paragraph "109" of the amended complaint.

23. State that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "110" of the amended complaint, except that they deny any inference which may be intended to be drawn from said allegations that "block booking" has [fol. 3262] any restrictive effect.

24. Deny each and every allegation contained in paragraph "111" of the amended complaint, except that these defendants admit that in addition to the license fees to be paid, their license agreements usually specify the run on which the feature pictures are to be exhibited by the exhibitor, that they usually specify the clearance, if any, which the exhibitor shall have over competing theatres and that they sometimes specify the minimum (adult and children, matinee and evening) admission prices which the exhibitor agrees to charge in his theatre or theatres when exhibiting the feature pictures covered by the license agreement.

25. Deny each and every allegation contained in paragraphs "112" and "113" of the amended complaint, except that they admit that the entertainment value of feature pictures released in the United States varies widely and that motion picture theatres generally do not change their admission prices from week to week but that each attempts to maintain a uniform admission price over a period of time.

26. State that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "114" of the amended complaint, except that they allege that as long as Paramount has been a producer and distributor of feature motion pictures it has licensed them upon a so-called "run" basis, and frequently their license agreements provide for periods of clearance over competing theatres.

27. Deny each and every allegation contained in paragraph "115" of the amended complaint, except that they [fol. 3263] admit that it is and for many years has been conceded by them and by exhibitors generally that uniform

runs and clearances are desirable, and except that they state that they are without knowledge or information sufficient to form a belief as to the provisions contained in license agreements of other distributors.

28. Deny each and every allegation contained in paragraph "116" of the amended complaint.

29. Deny each and every allegation contained in paragraph "117" of the amended complaint, except that they admit that in 1932 the Federal District Court in Nebraska rendered a decision in a case known as *Youngclaus v. Omaha Film Board of Trade, et al.*, 60 F. (2d) 538, to which decision this Court is respectfully referred, and except that they deny that after said decision in 1932, or at any time, they employed any agreements, express or otherwise, with other producers or distributors with respect to "protection" or "zoning."

30. Deny each and every allegation contained in paragraph "118" of the amended complaint, except that they admit that a code for the motion picture industry was duly adopted pursuant to the National Industrial Recovery Act which, among other things, dealt with "zoning" and "protection" and that the said code remained in force and effect in the industry until the invalidation of the said National Industrial Recovery Act by the Supreme Court of the United States.

31. Deny each and every allegation contained in paragraphs "119" and "120" of the amended complaint.

[fol. 3264] 32. Deny each and every allegation contained in paragraph "121" of the amended complaint, except that they admit that they enter into license agreements with exhibitors from time to time; that most of their license agreements cover only a single season's production of feature pictures, and that many of their license agreements cover periods of more than one season, and that their license agreements frequently cover more than one theatre.

33. Deny each and every allegation contained in paragraphs "122," "123," "124" and "125" of the amended complaint, except that they admit that every exhibitor in negotiating any license agreement attempts to secure the most favorable terms possible from the distributor.

34. Deny each and every allegation contained in paragraph "126" of the amended complaint, except that they admit that a number of prints of each feature picture, the number varying, among other things, in accordance with the needs of each particualr exchange, are delivered to each exchange prior to the national release date and delivered by the exchange to the various theatres which have licensed the film in accordance with the run established by the license agreements and that the prints are usually returned to the exchange after each use, and that feature pictures are frequently screened for all exhibitors who desire such screening.

35. Deny each and every allegation contained in paragraphs "127" and "128" of the amended complaint, except that they admit that exhibitors holding license agreements for the first run of Paramount pictures ordinarily charge higher admission prices in the towns or cities where their [fol. 3265] theatres are located than do exhibitors holding license agreements for subsequent runs of Paramount pictures and admit that the admission prices for subsequent runs of a feature pictures usually are lower than the admission prices for the preceding runs.

36. Deny each and every allegation contained in paragraphs "129" and "130" of the amended complaint.

37. State that they are without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations or computations contained in paragraphs "131" and "132" of the amended complaint.

38. State that they are without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraphs "133" to "141," inclusive, of the amended complaint, except that they deny the allegations contained in the said paragraph "141" in so far as it is therein alleged, or intended to be alleged, that all phases of the business of producing or distributing and of exhibiting motion pictures are in or directly affect trade and commerce among the several states and allege that many of the activities of each of the said branches of the industry are wholly intrastate.

39. Deny each and every allegation contained in paragraphs "142" to "187," inclusive, of the amended complaint.

Wherefore defendants Paramount Pictures, Inc. and Paramount Film Distributing Corporation pray that the [fols. 3266-3267] amended and supplemental complaint herein be dismissed as against them and each of them, with costs.

Simpson Thacher & Bartlett, 120 Broadway, New York, N. Y., Solicitors for defendants Paramount Pictures, Inc. and Paramount Film Distributing Corporation, by Albert C. Bickford, a member of said firm.

[fol. 3268] In the District Court of the United States

[Title omitted]

Consolidated Answer of RKO Defendants to Amended and Supplemental Complaint

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The defendants, Radio-Keith-Orpheum Corporation,[1] RKO Radio Pictures, Inc., RKO Proctor Corporation and RKO Midwest Corporation (hereinafter sometimes referred to as the answering defendants), by their solicitors, William J. Donovan and William Mallard, answering the Amended and Supplemental Complaint herein, allege as follows:

1. Deny so much of (1)[2] as alleges that the answering defendants have violated or are violating, or intend to violate Sections 1 or 2 of the Sherman Anti-Trust Act in the

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[1] Radio-Keith-Orpheum Corporation is hereinafter sometimes referred to as "the parent company"; RKO Radio Pictures, Inc., as "the RKO Company engaged in production and distribution"; RKO Proctor Corporation, RKO Midwest Corporation and Keith-Albee-Orpheum Corporation as "the RKO Companies engaged in exhibition"; and Keith-Albee-Orpheum Corporation as "KAO".

[2] Numbers in parentheses refer to corresponding numbered paragraphs of Amended and Supplemental Complaint.

manner alleged in the petition, or in any other manner, severally, or either jointly among themselves or with any other person or persons and, except as so denied state that they are without knowledge or information sufficient to form a belief as to each and every allegation therein.

[fol. 3269] 2. Deny each and every allegation of (2).

3. As to (3) and (4), state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

4. As to (5a) admit that Radio-Keith-Orpheum Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1270 Sixth Avenue, New York, N. Y., and allege that it owns stock and other securities in corporations which are engaged in the business of producing, distributing or exhibiting motion pictures, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries, and, except as so admitted and alleged, deny each and every allegation therein.

Admit the allegations contained in (5b).

As to (5c) admit that Keith-Albee-Orpheum Corporation is a corporation organized and existing under the laws of the State of Delaware and has a place of business at 1270 Sixth Avenue, New York, N. Y., and that Radio-Keith-Orpheum Corporation owns approximately 99% of its common stock and 33% of its preferred stock, and except as so admitted deny the allegations therein, but allege that "KAO" owns stock and other securities in corporations which are engaged in the business of exhibiting motion pictures, either directly, or through subsidiary or associated corporations.

As to (5d) and (5e) admit the allegations therein.

5. As to (6), (7), (9), (10) and (11), state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

[fol. 3270] 6. As to (15a),[1] deny the accuracy of the defini-

[1] Paragraph 6 through 8 of this answer are qualified in the same manner as the paragraphs of the Amended and Supplemental Complaint to which they are in answer are qualified by paragraph 14 thereof.

tion therein and allege that the term "producer" as therein defined includes persons, partnerships, associations and corporations which are seldom, if ever, referred to in the industry as producers;

As to (15b) and (15c), deny the accuracy of the definitions thereon;

As to (15d), admit the accuracy of the definition therein;

As to (15e), state that they are without knowledge or information sufficient to form a belief as to the truth thereof;

As to (15f) and (15g), admit the accuracy of the definitions therein;

7. As to (16a), admit the accuracy of the definition therein;

As to (16b) and (16c), allege that some companies that are engaged in the distribution of motion pictures are sometimes referred to in the industry as "major distributors," and that other companies so engaged are sometimes referred to as "independent distributors" and, except as so alleged, state that they are without knowledge or information sufficient to form a belief as to the truth thereof;

As to (16d), admit that the term "state rights distribution" is sometimes used in the industry, but, except as so admitted, state that they are without knowledge or information sufficient to form a belief as to the truth thereof;

As to (16e), admit the accuracy of the description therein, except they deny that branch exchanges operated by RKO [fol. 3271] Radio Pictures, Inc., solicit license agreements, but allege that they solicit applications for license agreements.

As to (16f), admit that the term "franchise" is sometimes used in the industry to describe a license agreement, or series of license agreements entered into as part of the same transaction, for the exhibition by the Licensee of the motion pictures released by the licensor during more than one exhibition season, and, except as so admitted, deny the remaining allegations therein.

As to (16g), deny the accuracy of the definition therein.

8. As to (17a), admit the accuracy of the definition therein;

As to (17b) and (17c), state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

As to (17d), state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

As to (17e), deny the accuracy of the definition therein.

As to (17f), admit that a group of theatres which is owned, controlled or managed by the same person, partnership or corporation is sometimes referred to as "a theatre circuit," and except as so admitted, state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein;

As to (17g) and (17i), admit the accuracy of the definitions therein;

As to (17h), deny the accuracy of the definition therein. [fol. 3272] As to (17j), admit that the term "release" when used as a verbal noun, is used in the industry as therein defined;

As to (17k) and (17m), admit that terms national release date and pre-release are used in the industry as therein defined;

As to (17-L), deny the accuracy of the definition therein, but allege that a trade showing is the exhibition of a feature at a theatre or projection room for the benefit of the trade generally;

As to (17n), deny the accuracy of the definition therein.

As to (17-o), RKO Radio Pictures, Inc., admits the accuracy of the definition therein; the other answering defendants state that they are without knowledge or information sufficient to form a belief as to the truth thereof;

As to (17p), (17q) and (17r), allege that "first-run" in the first exhibition of a motion picture after national release in a community or area; second-run is the exhibition of a motion picture in such community or area next subsequent to its first-run exhibition, and that subsequent-run is an exhibition of a motion picture in such area or community subsequent to its first-run, but usually after second-run; and, except as so alleged, deny each and every allegation therein;

As to (17s), allege that clearance means the period of time fixed by agreement between an exhibitor and a distributor prior to the expiration of which a feature licensed for prior exhibition in a theatre may not be exhibited in another theatre or theatres, and, except as so alleged, deny the accuracy of the definition therein;

[fol. 3273] As to (17t), state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

9. As to (18) through (55), state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

10. As to (56), admitt hat Radio-Keith-Orpheum Corporation, the corporation therein referred to, was incorporated under the laws of the State of Maryland on October 25, 1928, and that since its incorporation it has been primarily a holding company, i. e., owning stock in subsidiaries that either directly, or through other companies, are engaged in the production, distribution or exhibition of motion pictures. Shortly after its organization it acquired substantially all of the common stock of Keith-Albee-Orpheum Corporation and FBO Productions, Inc. Keith-Albee-Orpheum Corporation owned stock in other corporations that were engaged in operating theatres for the exhibition of vaudeville and motion pictures. Subsidiaries of FBO Productions, Inc., were engaged in producing and distributing motion pictures. Except as so alleged, they state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

11. As to (57), admit that Keith-Albee-Orpheum Corporation was incorporated on January 28, 1928, under the laws of the State of Delaware, and on to wit, February 16, 1928, acquired as of January 1, 1928, all the issued and outstanding stock of B. F. Keith Corporation and approximately 90% of the issued and outstanding common stock of Orpheum Circuit, Inc. B. F. Keith Corporation and Orpheum Circuit, Inc. owned or operated directly, or owned stock in corporations which owned or operated a number of theatres in various cities in the eastern part, and in the mid-[fol. 3274] western and western parts, respectively, of the United States, which prior thereto were engaged primarily in the exhibition of vaudeville, either alone or in conjunction with the exhibition of motion pictures. Except as so alleged, they deny the allegations therein.

12. As to (58), allege that subsequent to its incorporation and in addition to the acquisition of stock in Keith-Albee-Orpheum Corporation and Orpheum Circuit, Inc., as hereinabove alleged, Radio-Keith-Orpheum Corporation acquired

the ownership of stock in other companies which were either directly engaged in the business of showing vaudeville and/or exhibiting motion pictures, or owned stock in corporations engaged therein. Two of such companies were the RKO Proctor Corporation and the RKO Midwest Corporation. The RKO Midwest Corporation or companies subsidiary thereto, owned the fee, held the leasehold or operated theatres in Ohio and Michigan. The RKO Proctor Corporation, or companies subsidiary thereto, owned the fee, held the leasehold or operated theatres in the New York metropolitan district and upstate New York. Except as so alleged, they deny the allegations therein.

13. As to (59), Radio-Keith-Orpheum Corporation and the answering defendants engaged in exhibition admit that they and KAO, or subsidiaries thereof, operate the following number of theatres in the following cities:

City	No. of Theatres
Boston	2
Champaign, Ill.	2
Chicago	1
Cincinnati, Ohio	9
Cleveland, Ohio	3
Columbus, Ohio	2
Dayton, Ohio	3
Denver, Colorado	1
Des Moines, Iowa	1
[fol. 3275] Highland Park, Mich.	1
Kansas City, Mo.	1
Los Angeles, Cal.	1
Lowell, Mass.	1
Mt. Vernon, N. Y.	2
Newark, N. J.	1
New Brunswick, N. J.	3
New Rochelle, N. Y.	1
New York City, N. Y.	43
Providence, R. I.	1
Richmond Hill, N. Y.	1
Rochester, N. Y.	2
Rockaway Park, N. Y.	1
St. Paul, Minn.	1
San Francisco, Cal.	1
Syracuse, N. Y.	6

City	No. of Theatres
Trenton, N. J.	6
Union City, N. J.	1
Washington, D. C.	1
White Plains, N. Y.	1
Yonkers, N. Y.	3

and allege that they and KAO, or subsidiaries thereof, own the fee or the leasehold in or have an interest in the management or operation of, or in the proceeds or profits from the operation of, or have other types of interest, by the ownership of stock and otherwise, in other theatres not referred to above which none of them operate, or control the operation thereof; and state that they are without knowledge or information sufficient to form a belief as to the classification between "metropolitan first-run theatres" and "other theatres." Except as admitted and alleged, they deny the allegations therein.

RKO Radio Pictures, Inc., states that it is without knowledge or information sufficient to form a belief as to the truth thereof.

14. As to (60), admit that the name of FBO Productions, Inc., was ultimately changed to RKO Radio Pictures, Inc., and that RKO Radio Pictures, Inc., maintains studios for [fol. 3276] the production of motion pictures at Hollywood and Culver City, California, and, except as so admitted, state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

15. As to (61), admit that the corporations that are subsidiaries of Radio-Keith-Orpheum Corporation that are or were engaged in production produced feature motion pictures in the numbers therein alleged which were released during the motion picture exhibition seasons therein set forth except that they produced 41 during the 1938-39 season, and not 49 as alleged, and, except as admitted, state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

16. As to (62), admit that Radio-Keith-Orpheum Corporation purchased in January 1931 specified assets of Pathe Exchange, Inc., or subsidiaries thereof, including its newsreel business and certain facilities for the production

of motion pictures, and that the assets so purchased were held by various subsidiaries of Radio-Keith-Orpheum Corporation. Except as so admitted, they deny the allegations therein.

17. As to (63), allege that RKO Radio Pictures, Inc., produced an average of 36 short subjects per year. The Van Beuren Corporation, which is now a wholly-owned subsidiary of Radio-Keith-Orpheum Corporation but is in process of dissolution, produced, or had an interest in the production of, an average of 48 short subjects per year [fol. 3277] for the eight-year period ending 1937-38. During the same period Pathe News, Inc., which is a wholly-owned subsidiary of Radio-Keith-Orpheum Corporation, produced an average of 10 short subjects and 104 newsreels per year. Except as so alleged or admitted, they deny the allegations therein.

18. As to (64), allege that RKO Radio Pictures, Inc., presently maintains exchanges located in 32 cities for the distribution of motion pictures commonly known as "RKO product". During the 1936-37 season, it distributed 47 feature pictures. Usually, in each motion picture season, it distributes a number of pictures which are made by other producers. Except as so alleged, it denies each and every allegation therein.

19. As to (65), admit the allegations therein.

20. As to (66), Radio-Keith-Orpheum Corporation admits that it has gross assets of approximately $70,000,000, and, except as so admitted, denies each and every allegation therein. The other answering defendants state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

21. As to (67) through (86), state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

22. As to (87), the RKO defendants engaged in exhibition allege that in several cities where they or their subsidiaries own, operate or control theatres, the operation [fol. 3278] of some of these theatres is carried on in conjunction with the operation of theatres in which other defendants herein and other exhibitors have an interest, pur-

suant to various operating arrangements between them. Such other defendants are subsidiaries of Loew's, Inc., Warner Bros. Pictures, Inc., and Paramount Pictures, Inc. The nature of such operating relationships varies with the terms of the agreement under which the operation is carried on, and they vary so that they cannot be generically summarized as alleged in the complaint. Except as so alleged, they deny each and every allegation thereof.

The other answering defendants state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

23. As to (88) and (89), state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

24. As to (90) through (99), state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

25. As to (100) they admit that Radio-Keith-Orpheum Corporation had acquired between its incorporation in 1928 and 1930, the ownership of stock in companies that were engaged or subsidiaries of which were engaged in production, distribution and exhibition of motion pictures, and that the distribution system of RKO Distributing Corporation was nation-wide and that some of the pictures produced by RKO Radio Pictures, Inc., in 1930, cost as much as $500,000 or more to produce. Except as so admitted, they are without knowledge or information sufficient to form a belief as to the truth thereof.

[fol. 3279] 26. As to (101) Radio-Keith-Orpheum Corporation and RKO Radio Pictures, Inc., deny that they or any predecessor, either alone or in conjunction with any other person, now or ever had any control over the distribution of features costing in excess of $25,000, except in so far as they control their own distribution facilities. They admit that RKO Radio Pictures, Inc., and RKO Distributing Corporation, its predecessor in distribution, has at times distributed feature pictures produced by companies or individuals other than RKO Radio Pictures, Inc. Some of the contracts under which some of such pictures were produced contained provisions for the use by the producer of equipment owned by and production talent under contract to RKO Radio Pictures, Inc., and for the

financing of the cost of production in part by RKO Radio Pictures, Inc., or the borrowing of capital by the producer from other sources. Except as so admitted and denied, deny each and every allegation thereof.

The other answering defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations stated therein.

27. As to (102), RKO Radio Pictures, Inc., admits that equipment and technical and artistic talent necessary to produce profitable pictures has become more costly and that competition for the use of such talent has increased the cost thereof, and except as so admitted deny each and every allegation therein.

The other answering defendants state they are without knowledge or information sufficient to form a belief as to the truth thereof.

28. As to (103), Radio-Keith-Orpheum Corporation and RKO Radio Pictures, Inc., deny each and every allegation thereof. The other answering defendants state that they [fol. 3280] are without knowledge or information sufficient to form a belief as to the truth thereof.

29. As to (104), RKO Radio Pictures, Inc., admits that between January 1, 1933, and August 31, 1939, it loaned to other producers 91 stars, featured players, directors, writers, cameramen and other production talent who were under contract to it and received $250 per week or more in salary. Except as so admitted, it denies the allegations in so far as they state to them and state that they are without knowledge or information sufficient to form a belief as to the truth thereof, in so far as they relate to other defendants.

The other answering defendants state they are without knowledge or information sufficient to form a belief as to the truth thereof.

30. As to (105), state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

31. As to (106), state that they are without knowledge or information sufficient to form a belief as to the truth thereof, except that RKO Radio Pictures, Inc., denies the last sentence thereof in so far as it purports to describe the manner in which it licenses its pictures.

32. As to (107), RKO Radio Pictures, Inc., admits that many of the license contracts it negotiates with exhibitors contain the terms relative to a group of features to be released during a releasing season, and admits that its production program is subject to change without notice.

Except as so admitted, denies each and every allegation in so far as they relate to it, and it states it is without knowledge or information sufficient to form a belief as to the truth thereof, in so far as they relate to other defendants.

[fol. 3281] The other answering defendants state they are without knowledge or information sufficient to form a belief as to the truth thereof.

33. As to (108), RKO Radio Pictures, Inc., admits that the quality of the various feature pictures it distributes, varies widely in box-office attraction, and that in many of its license agreements, prices for pictures are grouped in various brackets in accordance with anticipated quality and in consequence of the bargaining between buyer and seller. It admits that the features in the top price bracket sometimes have rental terms based upon a percentage of the box-office receipts, and sometimes against a guaranteed figure, and those in the lowest price bracket are ordinarily licensed for a flat rental. It admits that the pictures in each bracket are sometimes untitled and unidentified and that, as a result, in such cases a picture is not allocated to a price bracket until it is about to be or after it is released. It admits that the amount of gross revenue and number of bookings received by the features it distributes in the same season vary widely.

Except as so admitted, denies each and every allegation in so far as they relate to it and states it is without knowledge or information sufficient to form a belief as to the truth thereof in so far as they relate to the other defendants.

The other answering defendants state they are without knowledge or information sufficient to form a belief as to the truth thereof.

34. As to (109), RKO Radio Pictures, Inc., denies that RKO Radio Pictures, Inc., releases each year a certain number of feature motion pictures which most of the exhibitors do not wish to exhibit at all. It alleges that each license agreement for its pictures is the result of free

negotiation with the licensed exhibitor, and that in such negotiations RKO Radio Pictures, Inc. attempts to induce the exhibitor to purchase or license as many features as [fol. 3282] it has or will probably have available for that exhibitor, consistent with its sound business judgment.

It denies that RKO Radio Pictures, Inc., attempts to or does or has compelled any exhibitor to commit himself to buy or play any features which he does not want or cannot profitably exhibit, either as a condition of licensing other features which he does want, and can profitably exhibit, or any other condition. Except as so admitted, alleged and denied, deny each and every allegation therein.

The other answering defendants state they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

35. As to (110), state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

36. As to (111), admit the allegations therein.

37. As to (112), state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

38. As to (113), deny each and every allegation therein, except that RKO Radio Pictures, Inc., admits it does not make license agreements with one exhibitor that are inconsistent with rights granted by contract to another exhibitor.

39. As to (114) and (115), state that they were without knowledge or information sufficient to form a belief as to the truth of the allegations therein, except that they deny the allegations in (115) in so far as they relate to the period between 1927 and 1931.

40. As to (116), deny each and every allegation therein [fol. 3283] in so far as they relate to them, and state that they are without knowledge or information in so far as they relate to other defendants, except that Radio-Keith-Orpheum Corporation and RKO Radio Pictures, Inc., admit that, with the knowledge and acquiescence of the plaintiff, RKO Distributing Corporation participated in conferences to establish the basis for clearance schedules by voluntary agreement of all parties affected.

41. As to (117), they admit that the United States District Court for the District of Nebraska rendered a decision on July 2nd, 1932, in a case entitled *Youngclaus* v. *Omaha Film Board of Trade, et. al.*, in which RKO Distributing Corporation was a party defendant, (which decision is reported in 60 F. (2d) 538), that an agreement among distributors which is therein set forth restrained trade in violation of the Sherman Act, and except as so admitted, deny each and every allegation therein, and allege that they have at all times refrained from entering into any agreement, express or otherwise, as therein alleged.

42. As to (118), RKO Radio Pictures, Inc., admits that a Code for the motion picture industry was duly adopted pursuant to the National Industrial Recovery Act, and except as so admitted, denies each and every allegation therein, in so far as they relate to it, and alleges that it has made no effort, by express agreement with other distributors, or otherwise, to establish uniform clearance schedules or zones.

The other answering defendants state that they were without knowledge or information sufficient to form a belief as to the truth thereof.

43. As to (119) and (120), deny each and every allegation therein in so far as they relate to them respectively.

44. As to (121), deny each and every allegation therein, except they admit that most of the license agreements [fol. 3284] entered into by them, either as licensor or licensee, cover only a single season's output of pictures of the licensor, but that at times they have entered into license agreements for a period of more than a single season, commonly known as franchises. RKO Radio Pictures, Inc., have entered into such license agreements not only with "affiliated" and "unaffiliated" circuit exhibitors, but also "independent" exhibitors. They state that they are without knowledge or information as to the allegations relative to the periods of franchises, or the maximum amount of film rental, or number of theatres or localities involved in "a single franchise."

45. As to (122), admit that a franchise, or a license of the exhibition of motion pictures for more than a single season, like any license agreement for motion pictures, is advantageous to the licensee in that it assures the licensee

a supply of motion pictures therein licensed, provided the licensor is able to perform; and allege that they, as licensor or licensee, grant or are granted rights under a franchise, the franchisor is unable to grant to other exhibitors during the term thereof rights inconsistent therewith. Except as so admitted, deny each and every allegation therein in so far as they relate to them and state that they are without knowledge or information sufficient to form a belief in so far as they relate to other defendants.

46. As to (123), deny each and every allegation in so far as they relate to them, and state they are without knowledge or information sufficient to form a belief as to the truth thereof, in so far as they relate to the other defendants.

47. As to (124), admit that an exhibitor, in negotiating a license agreement, attempts to secure the most favorable terms for all the theatres for which he is negotiating, and admit that they either, as licensor or licensee as the case [fol. 3285] may be, at times negotiate at the same time in respect to all the theatres that compose a circuit. They deny that as a result of the matters therein alleged, an independent exhibitor, operating a single theatre or a large number of theatres in competition with a circuit, is unable to compete for the privilege of licensing the films distributed by RKO Radio Pictures, Inc., (or pictures distributed by other distributors for which an answering defendant engaged in exhibition is negotiating), and deny that such independent exhibitor is frequently or ever excluded from consideration as a prior-run outlet in the manner or as a result of the matters therein alleged; and, except as so admitted and denied, deny the allegations therein.

48. As to (125), deny each and every allegation therein.

49. As to (126), admit that prior to national release date a number of prints of a feature are delivered to each branch exchange of RKO Radio Pictures, Inc., in accordance with the number of accounts in that exchange and the prospective popularity of the picture. Upon or shortly after the arrival of the prints at the exchange, the feature is sometimes privately screened, or exhibited for the benefit of the salesmen and the trade. Thereafter, if the exhibitor who has, by license agreement, the right to exhibit the feature pictures distributed by RKO Radio Pictures, Inc., in that area on first-run, books said feature, it is exhibited

first in that exhibitor's theatre. Upon its return to the exchange office, after completion of first-run exhibition, it is exhibited by other exhibitors in that area in accordance with their respective playing positions as provided for by their license agreements with the distributor. If the first-run exhibitor elects not to book or play said feature, RKO Radio Pictures, Inc. either attempts to liecense it to another [fol. 3286] exhibitor to be exhibited on first-run or makes it available to be booked by the subsequent-run exhibitors who have contracted for its use, in the order established by their respective license agreements. They admit that at times the pictures they reject as first-run licensees, or, as to RKO Radio Pictures, Inc., the pictures which its first-run licensees reject, are inferior as box-office attractions to those selected. Except as so admitted, they deny each and every allegation therein.

50. As to (127), deny each and every allegation therein except that RKO Raoid Pictures admits that licensees having the right to exhibit its pictures first-run usually charge higher admission prices than its subsequent run exhibitors in that area. They state that they are without knowledge or information sufficient to form a belief in so far as the allegations relate to other defendants.

51. As to (128), RKO Radio Pictures, Inc., admits that the admission prices charged by exhibitors on both first and subsequent run are a factor it considers in determining the run and clearance on which it will license an exhibitor and that its first-run exhibitors usually charge the highest admission prices in their area and that the run of subsequent-run exhibitors tends to vary with the relative admission price charged, and except as so admitted, deny each and every allegation therein.

RKO Proctor Corporation and RKO Midwest Corporation admit that, in respect to first-run license agreements they negotiate with distributors who are defendants herein, the admission prices they propose to charge are a factor in securing first-run exhibition, and that, in the areas where they operate theatres, the run of subsequent-run exhibitors tends to vary with the relative admission prices charged, and, except as so admitted, deny each and every allegation therein.

Radio-Keith-Orpheum Corporation states it is without [fol. 3287] knowledge or information sufficient to form a belief as to the truth thereof.

52. As to (129) and (130), deny each and every allegation therein.

53. As to (131) and (132), state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

54. As to (133), Radio-Keith-Orpheum Corporation and RKO Radio Pictures, Inc., admit the allegations therein in so far as they purport to describe the production of feature length pictures by RKO Radio Pictures, Inc., except that they state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations that personnel employed in such production is in many instances drawn across state lines from all parts of the nation, and that costumes and raw materials entering into the making of pictures in many instances are manufactured outside the State of California and shipped across state lines to the studios. The other answering defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

55. As to (134), state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

56. As to (135), Radio-Keith-Orpheum Corporation and RKO Radio Pictures, Inc., admit and allege that, as to pictures produced by RKO Radio Pictures, Inc., after the scenes going to make up a motion picture have been photographed, the negatives of such pictures are developed by an independent contractor in California. The negative is then cut, fixed, edited, and then usually shipped by it to [fol. 3288] New York or New Jersey, where positive prints are made by another independent contractor. They admit that the number of positive prints so made varies between fifty (50) and upwards of two hundred and fifty (250), and are made to fulfill the contractual requirements of RKO Radio Pictures, Inc., for the picture in question. Said positive prints are the motion picture films which are pro-

jected through the motion picture projectors onto the screens of motion picture theatres, and admit that in most cases said positive prints are shipped across state lines to the branch exchanges maintained by RKO Radio Pictures, Inc. Except as so admitted, they deny the allegations therein. The other answering defendants state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

57. As to (136), Radio-Keith-Orpheum Corporation and RKO Radio Pictures, Inc., admit the allegations therein in so far as they relate to RKO Radio Pictures, Inc., the other answering defendants state that they lack knowledge or information sufficient to form a belief as to the truth thereof.

58. As to (137), Radio-Keith-Orpheum Corporation and RKO Radio Pictures, Inc., admit the allegations therein, in so far as they relate to them, except that they allege that their salesmen solicit exhibits to enter into license agreements both before and after the production program for the ensuing season is arranged and fixed. The other answering defendants state that they lack knowledge or information sufficient to form a belief as to the truth thereof.

59. As to (138), Radio-Keith-Orpheum Corporation and RKO Radio Pictures, Inc., admit the allegations therein. The other answering defendants state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

[fol. 3289] 60. As to (139), Radio-Keith-Orpheum Corporation and RKO Radio Pictures, Inc., admit the allegations therein in so far as they relate to RKO Radio Pictures, Inc., except they allege that positive prints are seldom delivered from one exhibitor to another without being returned to the branch exchange for examination and repair and temporary storage. The other answering defendants state that they are without knowledge or information sufficient to form a belief as to their truth.

61. As to (140), Radio-Keith-Orpheum Corporation and RKO Radio Pictures, Inc. deny each and every allegation therein, except they admit that the production of motion pictures by RKO Radio Pictures, Inc. involves, in part, the assemblage of personnel, property and material at its studios

and on location; that the distribution of motion pictures by RKO Radio Pictures, Inc., involves, in part, the solicitation and making of contracts for the delivery of motion pictures produced and to be produced, the transportation of negative film from California to laboratories in New York and New Jersey where positive prints of said motion pictures are prepared and thence shipped to the film exchanges of RKO Radio Pictures, Inc. throughout the United States, the delivery of said prints from said exchanges to and from the motion picture theatres located in the areas served by the respective exchanges, the occasional interchange of said prints between various exchanges of RKO Radio Pictures, Inc., some of which may be located in other states of the United States, and finally the shipment of said prints from said exchanges to New York for scrapping.

The answering defendants that are engaged in exhibition state that they are without knowledge or information sufficient to form a belief as to the truth thereof, except that they deny that the operation of a theatre, the exhibition of motion pictures, and the making of arrangements incident [fol. 3290] thereto is interstate commerce or is a part of interstate commerce, or a part of a constant, continuous stream of trade and commerce between the states.

62. As to (141), deny each and every allegation therein.

63. As to (142) through (150), Radio-Keith-Orpheum Corporation and RKO Radio Pictures, Inc. deny each and every allegation therein.

The other answering defendants state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

64. As to (150) through (165), deny each and every allegation therein.

65. As to (166) through (169), Radio-Keith-Orpheum Corporation, and RKO Radio Pictures, Inc. deny each and every allegation therein. The other answering defendants state that they are without knowledge or information sufficient to form a belief as to the truth thereof.

66. As to (170) through (177), deny each and every allegation therein.

67. As to (178), deny each and every allegation therein.

68. As to (170), deny each and every allegation therein.

69. As to (180) through (187), deny each and every allegation therein.

70. Deny each and every allegation in the amended and supplemental complaint that relates to them, which has not been hereinabove admitted, denied, or otherwise answered; and state that they are without knowledge or information sufficient to form a belief as to the truth of each and every allegation in said complaint, in so far as they or any of them [fols. 3291-3293] relate to other defendants and have not been hereinabove admitted, denied, or otherwise answered.

Wherefore, having made complete answer to the Amended and Supplemental Complaint herein, the answering defendants respectfully pray that an order be entered dismissing said complaint, with prejudice, and that the answering defendants be awarded costs and disbursements and such other relief as the Court may deem just and proper.

November 14, 1940.

(Signed) William J. Donovan, William Mallard; Solicitors for Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., RKO Proctor Corporation and RKO Midwest Corporation.

[fol. 3294] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER OF KEITH-ALBEE-ORPHEUM CORPORATION TO AMENDED AND SUPPLEMENTAL COMPLAINT

The defendant Keith-Albee-Orpheum Corporation by its solicitors, Goldwater & Flynn, Esqs., answering the amended and supplemental complaint herein, alleges as follows:

1. Denies each and every allegation of the following paragraphs of the complaint insofar as they relate, or purport to relate, to the answering defendant, and denies that it has any knowledge or information thereof sufficient to form a belief as to the truth of the allegations insofar as they

relate to the other defendants: 2, 116, 119, 129, 130, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186 and 187.

2. Denies that it has any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation in the following paragraphs of the complaint: 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 58, 60, 61, 62, 63, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 93, 94, 95, 96, [fol. 3295] 97, 98, 99, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 117, 118, 120, 121, 122, 123, 124, 125, 126, 127, 128, 131, 132, 139, 142, 143, 144, 145, 146, 147, 148, 149, 166, 167, 168, and 169.

3. Denies so much of paragraph 1 of the complaint as alleges, or purports to allege, that the answering defendant has violated, is violating, or intends to violate, Section 1 or Section 2 of the Sherman Anti-Trust Act in the manner alleged in said complaint, or in any other manner, either individually or with any other person, or persons, and denies that it has any knowledge or information thereof sufficient to form a belief as to the truth of each and every other allegation therein.

4. Denies so much of paragraph 5 (c) of the complaint as alleges that Keith-Albee-Orpheum Corporation is engaged in the business of exhibiting motion pictures and alleges that Keith-Albee-Orpheum Corporation owns stock and other securities in corporations which are engaged in the business of exhibiting motion pictures, either directly or through subsidiary or associated corporations.

5. Admits that the terms defined in paragraphs 15, 16 and 17 of the complaint may possibly have the meanings therein set forth but denies that said definitions are in all respects accurate or that they are commonly accepted by the motion picture industry.

6. Admits so much of paragraph 56 of the complaint as alleges that Radio-Keith-Orpheum Corporation was incorporated under the Laws of the State of Maryland on October 25, 1928, and that since its incorporation, it has been

primarily a holding company, and that shortly after its organization it acquired substantially all of the common [fol. 3296] stock of Keith-Albee-Orpheum Corporation and FBO Productions, Inc., and alleges that at the time of the acquisition by Radio-Keith-Orpheum Corporation of the common stock of Keith-Albee-Orpheum Corporation, Keith-Albee-Orpheum Corporation was engaged in the business of holding stock and other securities in corporations engaged in operating theatres for the exhibition of vaudeville and motion pictures, either directly or through subsidiary or associated corporations and further alleges that Radio-Keith-Orpheum Corporation now holds approximately 99.85% of the common stock of Keith-Albee-Orpheum Corporation, and approximately 33.8% of the preferred stock of said corporation, and that the Certificate of Incorporation of Keith-Albee-Orpheum Corporation provides that whenever six quarterly dividends on the preferred stock shall be unpaid, in whole or in part, the entire voting power for the election of a majority of the Board of Directors shall be exclusively vested in the preferred stock until all such arrears have been paid; that six quarterly dividends on the preferred stock of Keith-Albee-Orpheum Corporation have been in arrears since on or about April 1, 1933; that whether or not Radio-Keith-Orpheum Corporation has the right to elect a majority of the Board of Directors of Keith-Albee-Orpheum Corporation depends upon whether it is entitled to cumula- the question has never been submitted to the Courts; that certain large holders of preferred stock of Keith-Albee-Orpheum Corporation have challenged such right and that the question has never ben submitted to the Courts; that the Board of Directors of Keith-Albee-Orpheum Corporation, since June 19, 1933, has been selected by mutual agreement between the principal stockholding groups; that since 1933 Radio-Keith-Orpheum Corporation has not controlled the Board of Directors of Keith-Albee-Orpheum Corporation or the activities of that Corporation. Except [fol. 3297] as hereinabove admitted and alleged, the answering defendant denies that it has knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained in said paragraph 56 of the complaint.

7. Admits so much of paragraph 57 of the complaint as alleges that Keith-Albee-Orpheum Corporation was incorpo-

rated on January 28, 1938 under the Laws of the State of Delaware and on, to-wit, February 16, 1928, acquired as of January 1, 1928 all of the issued and outstanding stock of B. F. Keith Corporation, and approximately 90% of the issued and outstanding common stock of Orpheum Circuit, Inc. and that B. F. Keith Corporation owned or operated, directly, or owned stock in corporations which owned or operated, a number of theatres in various cities in the eastern part of the United States which, prior thereto, were engaged primarily in the exhibition of vaudeville, either alone or in conjunction with the exhibition of motion pictures, and that Orpheum Circuit, Inc. owned or operated directly, or owned stock in corporations which either owned or operated theatres located in the midwestern and western parts of the United States, and except as so admitted and alleged, denies the allegation of paragraph 57 of the complaint.

8. Denies so much of paragraph 59 of the complaint as alleges, or purports to allege, that those theatres owned, operated or controlled by subsidiaries of Keith-Albee-Orpheum Corporation which are included in tables (a) and (b) of said paragraph, are now operated by RKO, and denies that it has any knowledge or information thereof sufficient to form a belief as to the truth of the other allegations of said paragraph 59.

9. Admits so much of paragraph 64 of the complaint as alleges that RKO product is distributed by RKO Radio Pictures, Inc. and denies that it has any knowledge or infor- [fol. 3298] mation thereof sufficient to form a belief as to the truth of the other allegations thereof.

10. Admits so much of paragraph 87 of the complaint as alleges that in the cities where the subsidiaries of Keith-Albee-Orpheum Corporation own, operate or control theatres, the operation of some of these theatres is carried on in conjunction with the operation of theatres in which the other defendants herein, and other exhibitors, have an interest, pursuant to various operating arrangements between them and, except as so admitted, denies each and every allegation thereof.

11. Admits so much of paragraph 100 of the complaint as alleges that Radio-Keith-Orpheum Corporation had acquired, between its incorporation in 1928 and 1930, the own-

ership of stock in companies that were engaged in production, distribution and exhibition of motion pictures, and except as so admitted, denies that it has any knowledge or information thereof sufficient to form a belief as to the truth of the allegations thereof.

12. Denies so much of paragraphs 140 and 141 of the complaint as allege, or purport to allege, that the exhibition branch of the motion picture industry is either in, or directly affects trade or commerce among the several states.

Further Answering the Complaint, and As a First, Separate Defense Thereto, Defendant Alleges:

13. That this Court has no jurisdiction over the matters and things alleged in the complaint.

[fols. 3299-3300] Further Answering the Complaint, and As a Second, Separate Defense Thereto, Defendant Alleges:

14. That the petition fails to state a claim as to the answering defendant on which any relief can be granted.

Wherefore, having made complete answer to the complaint, the answering defendant prays that this complaint be dismissed as to it, and that it be awarded its costs and disbursements and such other and further relief as to the Court may seem just and proper in the premises.

Dated, New York, N. Y., November 14th, 1940.

Monroe Goldwater, Goldwater & Flynn, Solicitors for Keith-Albee-Orpheum Corporation, 60 East 42 Street, New York, N. Y.

[fol. 3301] In District Court of the United States

[Title omitted]

Answer of Defendants Warner Bros. Pictures, Inc., et al. to Amend and Supplemental Complaint

Defendants Warner Bros. Pictures, Inc., Vitagraph, Inc., and Warner Bros. Circuit Management Corporation, by R. W. Berkins, their solicitor, for their answer to the

amended and supplemental complaint, hereinafter referred to as "complaint," respectfully allege:

1. Answering paragraph 1 of the complaint, defendants deny that they or any of them have jointly or severally violated section 1 or 2 or any of the sections of the Act of Congress commonly known as the Sherman Anti-Trust Act.

2. Deny each and every allegation in paragraph "2." of the complaint.

3. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 3 (a) and (b), 4 and 5 (a), (b), (c), (d) and (e) of the complaint.

4. Deny each and every allegation in paragraphs 6 (a) and 6 (b) of the complaint except admit that defendant Warner Bros. Pictures, Inc. is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 321 West 44th Street, New [fol. 3302] York, New York; that said defendant is engaged in the business of producing motion pictures, and it and some of its subsidiary and associated corporations are engaged in the business of exhibiting motion pictures in various parts of the United States; that Vitagraph, Inc., a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York with a place of business at 321 West 44th Street, New York, New York, and is engaged in the business of distributing motion pictures in the United States.

5. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraphs 7 (a) and (b), 9 (a), (b) and (c), 10 (a), (b), (c) and (d), and 11 of the complaint.

6. Admit that the terms "major producer" as defined in paragraph "15 (b)" of the complaint and "major distributor" as defined in paragraph "16 (b)" of the complaint are sometimes loosely used by some persons, but deny that said definitions are applicable exclusively to the defendants herein.

7. Deny each and every allegation in paragraphs 15 (c) and (e) of the complaint.

8. Deny each and every allegation in paragraph "16 (c)" of the complaint.

9. Deny each and every allegation in paragraph "16 (d)" of the complaint, except admit that some state rights distributors do not operate a system of national exchanges but acquire the right to distribute motion pictures in a particular state or territory.

10. Admit the allegations in paragraph "16 (e)" of the complaint, except deny that license agreements are solicited at any Vitagraph exchange, but admit that applications for [fol. 3303] license agreements are solicited at Vitagraph exchanges.

11. Admit that the term "franchise" as defined in paragraph "16 (f)" of the complaint is sometimes loosely used by some persons.

12. Deny each and every allegation in paragraph "16 (g)" of the complaint.

13. Deny each and every allegation in paragraph 17 (b) and (c) of the complaint.

14. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "17 (d)" of the complaint.

15. Deny each and every allegation in paragraph "17 (e)" of the complaint.

16. Deny each and every allegation in paragraphs 17 (f), (g) and (h) of the complaint.

17. Admit that the term "motion picture season" as defined in paragraph "17 (i)" of the complaint is sometimes loosely used by some persons.

18. Deny each and every allegation in paragraph "17 (l)" of the complaint, except admit that a "trade showing" is the exhibition of a motion picture at a theatre or projection room for the benefit of exhibitors generally.

19. Deny each and every allegation in paragraph "17 (n)" of the complaint.

20. Admit the allegations of paragraph "17 (p)" of the complaint except deny that such first run exhibition is necessarily after national release.

21. Deny each and every allegation in paragraph "17 (s)" of the complaint.

22. Deny each and every allegation in paragraph "17 (t)" of the complaint, except admit that a "zone" is a specified geographical area.

[fol. 3304] 23. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraphs 18, 19, 20, 21, 22, 23, 24, 25 (a) and (b), 26, 27, 28, 29, 30, 31, 32 (a) and (b) and 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 (a) and (b) and 46 of the complaint.

24. Deny each and every allegation in paragraph "47" of the complaint, except admit that Warner Bros. Pictures, Inc., was incorporated in 1923, for the purposes enumerated in its certificate of incorporation, which include among others, producing, distributing and exhibiting motion pictures, and admit the second sentence of said paragraph.

25. Deny each and every allegation in paragraph "49" of the complaint, except admit that Warner Bros. Pictures, Inc., is one of the principal producing companies in the motion picture industry and maintains production facilities at Burbank, Calif., and it or its subsidiary or associated corporations maintain production facilities at Brooklyn, N. Y.; that the number of feature motion pictures produced by it or any subsidiary or associated corporations for the nine year period ending with the 1938-39 season, is indicated by the following tabulation:

Season	Feature Motion Pictures
1930-31	70
1931-32	56
1932-33	53
1933-34	54
1934-35	51
1935-36	58
1936-37	58
1937-38	52
1938-39	53

[fol. 3305] 26. Deny each and every allegation in paragraph 54 (a) and (b) of the complaint except admit that Warner Bros. Pictures, Inc. or its subsidiary and asso-

ciated corporations operate the following number of theatres in the following states:

California	12
Connecticut	31
Delaware	6
Washington, D. C.	19
Illinois	16
Indiana	2
Maryland	9
Massachusetts	16
New Jersey	63
New York	27
Ohio	30
Oklahoma	3
Oregon	2
Pennsylvania	162
Tennessee	1
Virginia	8
Washington	3
West Virginia	11
Wisconsin	12

27. Deny each and every allegation in paragraph "55" of the complaint.

28. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraphs 56, 57, 58, 59 (a) and (b), 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85 and 86 of the complaint.

29. Deny that they have any knowledge or information [fol. 3306] sufficient to form a belief as to the truth of any of the allegations in paragraphs 87, 88, 89 of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraphs in so far as it relates to these defendants, except admit that in addition to the theatres listed in paragraph "26" of this answer, certain subsidiary and associated corporations of Warner Bros. Pictures, Inc. have interests in the operation of certain theatres owned or operated by others including some of the producer-exhibitor defendants, pursuant to the terms of certain agreements.

30. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraphs 90, 91, 92, 93, 94, 95, 96, 97, 98 and 99 of the complaint.

31. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraphs 100 and 101 of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraphs in so far as it relates to these defendants, except admit that in 1930, Warner Bros. Pictures, Inc. was engaged in the business of producing motion pictures; that Vitagraph, Inc., a wholly owned subsidiary of said Warner Bros. Pictures, Inc. was engaged in the business of distributing pictures, and Warner Bros. Pictures, Inc. and some of its subsidiary and associated corporation- were engaged in the business of exhibiting motion pictures; that in 1930, some of the motion pictures produced by Warner Bros. Pictures, Inc. or by its associated and affiliated corporations cost as much as $500,000.00 or more; that Vitagraph, Inc. has distributed motion pictures not produced by Warner Bros. Pictures, Inc. or its [fol. 3307] subsidiary or affiliated corporation, pursuant to arrangements which at times might include the use of equipment owned by, or talent under contract to such companies, and which might at times include the financing of those productions directly or indirectly by such companies.

32. Deny each and every allegation in paragraphs 102, and 103 of the complaint, except admit that equipment and technical and artistic talent and the use thereof, necessary to these defendants to produce profitable motion pictures have become more costly, because of the competition therefor.

33. Deny that they have any knowledge or information sufficient to form a belief as to the truth of the allegations paragraph "104" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants, except admit that during the period January 1, 1934 to September 2, 1939 Warner Bros. Pictures, Inc. loaned to other producers, in 235 instances, stars, feature players, directors, writers, cameramen and other production personnel.

34. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "105" of the complaint.

35. Deny that they have any knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "106" of the complaint, in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants.

36. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "107" of the complaint in so far as they relate to the other defendants; deny each and every [fol. 3308] allegation in said paragraph in so far as it relates to these defendants except admit that some of the license contracts of Vitagraph, Inc. contain the terms on which a group of motion pictures are to be exhibited over a period of at least one year; that some of the contracts of Vitagraph, Inc. cover all or a lesser number of motion pictures released during the one year period or a lesser number to be selected from all released as and when released; that some licenses are negotiated prior to the commencement of each motion picture season before any of the motion pictures covered have been released; that the production programs announced by Vitagraph, Inc. at the beginning of each motion picture season are subject to change without notice to any exhibitor.

37. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "108" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants except admit that the quality of the motion pictures produced by Warner Bros. Pictures, Inc. varies as box office attractions; and that such motion pictures are priced in various brackets in the license agreement in accordance sometimes with anticipated and sometimes with known quality; that some of its motion pictures may gross more than One Million ($1,000,000.) Dollars in film rental and play in more than ten thousand (10,000) theatres, while other of its motion pictures may gross less than Two Hundred Thousand ($200,000.) Dollars in film rental and

play in less than Five Thousand (5,000) theatres; that the motion pictures priced in the highest brackets in license [fol. 3309] agreements sometimes have rental terms based upon a percentage of the box office receipts and sometimes rental terms based upon a percentage of the box office receipts against a guaranteed figure and the motion pictures priced in the lowest priced brackets are sometimes licensed for a flat amount; that the motion pictures included in each price bracket are sometimes untitled and unidentified; that sometimes such motion pictures are allocated to a price bracket after their release; that sometimes differences of opinion arise between exhibitors and Vitagraph with respect to such allocation.

38. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "109" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants.

39. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "110" of the complaint.

40. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "111" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants, except admit that some of the license contracts between Vitagraph, Inc. and exhibitors contain provisions with respect to the run on which the motion pictures are available to the exhibitor, the clearance over competing theatres, and the minimum admission prices to be charged when exhibiting such motion pictures.

41. Deny that they have any knowledge or information sufficient to form a belief as to the truth of the allegations [fol. 3310] in paragraph "112" of the complaint in so far as they relate to the other defendants; deny each and every allegation in so far as it relates to these defendants, except admit that the entertainment value of the motion pictures released in the United States from week to week varies widely; and that many of the theatres operated by Warner Bros. Pictures, Inc. or its subsidiary or associated

corporations play all of the motion pictures it exhibits on the same run with the same clearance and at the same admission price.

42. Deny that they have any knowledge of information sufficient to form a belief as to the truth of any allegations in paragraph "113" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants, except admit that the provisions in any license agreement of Vitagraph, Inc. with regard to run and clearance prevent Vitagraph, Inc. from thereafter granting to other exhibitors rights in conflict therewith.

43. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraphs "114" and "115" of the complaint.

44. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "116" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants, except admit that, with the knowledge and acquiescence of the plaintiff, Warner Bros. Pictures, Inc. participated in some conferences to establish the basis for clearance schedules by voluntary agreement of all parties affected.

[fol. 3311] 45. Answering paragraph "117" of the complaint, deny that they have entered into any agreements, express or otherwise, with respect to uniform protection and zoning.

46. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "118" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants, except admit that a code for the motion picture industry was adopted pursuant to the National Industrial Recovery Act, and deny that these defendants have made any effort to establish uniform clearance and zoning by any agreements.

47. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allega-

tions in paragraphs "119" and "120" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraphs in so far as it relates to these defendants.

48. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraphs "121" and "122" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraphs in so far as it relates to these defendants, except admit that some long term franchises are advantageous to the exhibitors with whom they are made in that they grant such exhibitors an assurance of product for the term of such franchise, and that wherever a distributor grants rights under a long term franchise it is thereafter and during said term unable to grant to other exhibitors rights in conflict therewith.

[fol. 3312] 49. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "123" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants, except admit that some franchises do contain some of the provisions described in said paragraph of the complaint.

50. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraphs "124" and "125" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraphs in so far as it relates to these defendants, except admit that an exhibitor in negotiating for a license agreement seeks to obtain the most favorable terms for the theatre or theatres for which he is negotiating.

51. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "126" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants, except admit that a number of prints of each motion picture are delivered to each exchange of Vitagraph, Inc. prior to its national release date and are made available by that exchange to the various theatres for which such

motion picture has been licensed in accordance with the terms of the license, and are usually returned to that exchange after exhibitions, and that the number of prints of each motion picture delivered to each Vitagraph, Inc. exchange depends upon various factors including the number of theatres served by such exchange.

[fol. 3313] 52. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "127" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants, except admit that many theatres, operated by Warner Bros. Pictures, Inc. or its subsidiary or associated corporations, which exhibit motion pictures first run on the area in which such theatres are located charge the highest admission prices in such areas, and the programs of such theatres generally consist of motion pictures of the highest quality which those corporations are able to obtain for said theatres.

53. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "128" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants, except admit that the admission price charged by an exhibitor is one of the factors considered by Vitagraph, Inc. in negotiating run and clearance.

54. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraphs "129" and "130" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants.

55. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "131" of the complaint in so far as they relate to the other defendants; deny each and every allega-[fol. 3314] tion in said paragraph in so far as it relates to these defendants, except admit that of the feature motion pictures played in certain first run theatres operated by Warner Bros. Pictures, Inc. or its subsidiary or associated corporations in certain of the larger cities approximately

95% were released by distributors who are defendants herein and that said percentage varies with each such theatre.

56. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "132" of the complaint.

57. Answering paragraph "133" of the complaint, these defendants admit that the acts alleged in the first sentence of the paragraph constitute some of the factors entering into the production of motion pictures; deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in the remainder of said paragraph in so far as they relate to the other defendants; and deny said allegations in so far as they relate to these defendants, except admit that most of the personnel involved in the production of motion pictures is usually assembled at the studios in California, and some of the costumes and raw materials entering into the making of motion pictures may be manufactured outside of the State of California and shipped to California.

58. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "134" of the complaint.

59. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "135" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these [fol. 3315] defendants, except admit that after the scenes going to make up a motion picture have been photographed, they are developed, cut, fixed, edited and arranged at the studios in California; that the positive prints of motion pictures produced by Warner Bros. Pictures, Inc. are made in the States of California and New York; that usually 165 to 330 positive prints of each feature length motion picture are made for distribution in the United States; that the said positive prints are those which are projected through motion picture projectors to the screens of motion picture theatres, and that some positive prints are shipped across state lines to film exchanges maintained by Vitagraph, Inc. in certain cities in the United States.

60. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "136" of the complaint in so far as they relate to the other defendants, and deny each and every allegation in said paragraph in so far as it relates to these defendants, except admit that several months before the commencement of the motion picture season Vitagraph, Inc. announces its program of motion pictures for the coming season; that said program generally describes the motion pictures to be distributed, so far as known, giving, in many instances, their titles, the names of the stars and other featured players, the directors, the story material and such other pertinent material as may be available, subject to exigencies of production; that plans are made for the production of such motion pictures as may not have already been [fol. 3316] completed, and the release of the motion pictures at approximately regular intervals throughout the motion picture season, which begins approximately September 1st of each year.

61. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "137" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants, except admit that generally, Vitagraph, Inc. proceeds, through its salesmen, who work out of its film exchanges, to solicit applications from exhibitors for a license to exhibit the motion pictures announced in its program; that each such motion picture is copyrighted under the copyright laws of the United States by the producer thereof, and that the solicited applications, when signed by exhibitors, are, by the term- thereof, transmitted to the principal office of Vitagraph, Inc. in New York where such applications are either approved or rejected by Vitagraph, Inc.

62. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "138" of the complaint in so far as they relate to the other defendants, and deny that all positive prints, when completed at the laboratories, are shipped across state lines to the various film exchanges of Vitagraph, Inc.

63. Admit the allegations in paragraph "139" of the complaint except allege that the transportation of film from a prior run theatre to a subsequent run theatre is not a usual occurrence at a Vitagraph, Inc. exchange.

[fol. 3317] 64. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph "140" of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraph in so far as it relates to these defendants, except admit that the production of motion pictures involves, in part, the assemblage of personnel, property and material at the studios of Warner Bros. Pictures, Inc.; that the distribution of motion pictures by Vitagraph, Inc. involves, in part, the solicitation and making of contracts for the delivery of motion pictures produced and to be produced, the transportation or positive prints of said motion pictures to the film exchanges of Vitagraph, Inc. in the United States, the distribution of said films from said exchanges to and from the motion picture theatres located in the areas served by the respective exchanges, the occasional interchange of said films between various exchanges of Vitagraph, Inc. some of which may be located in other states of the United States, and finally, the shipment of said films from said exchanges to a point within the state of New York for scrapping.

65. Deny each and every allegation in paragraphs 141, 142, 143, 144, 145, 146, 147, 148, 149 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), and (p), 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, and 169 of the complaint.

66. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraphs 170, 171, 172, 173, 174, 175, 176 and 177 of the complaint in so far as they relate to the other de-
[fols. 3318-3319] fendants; deny each and every allegation in said paragraphs in so far as it relates to these defendants.

67. Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraphs 178, 179, 180, 181, 182, 183, 184, 185, 186 and 187 of the complaint in so far as they relate to the other defendants; deny each and every allegation in said paragraphs in so far as it relates to these defendants.

Wherefore, these defendants pray that the complaint herein be dismissed as against them and each of them, and for such other and further relief as to this Court may seem just and proper in the premises.

Dated: November 14, 1940

R. W. Perkins, Solicitor for Defendants, Warner Bros. Pictures, Inc., Vitagraph, Inc. and Warner Bros. Circuit Management Corporation.

[fol. 3320] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

COLUMBIA'S ANSWER TO AMENDED AND SUPPLEMENTAL COMPLAINT

The defendants, Columbia Pictures Corporation, Screen Gems, Inc., and Columbia Pictures of Louisiana Incorporated, all hereinafter referred to collectively as "Columbia," answering the amended and supplemental complaint by Schwartz & Frohlich, their attorneys, deny that they have created a monopoly or attempted to create a monopoly, or have restrained or attempted to restrain trade or commerce, or have in any way violated the Sherman Anti-Trust Act.

1. Deny each and every allegation contained in paragraphs "1," "2," "14," "15(a)" to "(g)" inclusive, "124," "125," "126," "127," "128," "150," "151," "152," "153," "154," "155," "156," "157," "158," "159," "160," "161," "162," "163," "164," "165," "166," "167," "168," "169," "170," "171," "172," "173," "174," "175," "176," "177," "178," "179," "180," "181," "182," "183," "184," "185," "186," and "187."

[fol. 3321] 2. Deny that they have any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "3," "4," "5," (a) (b) (c) (d) (e), "6," (a) (b) (c) "7" (a) (b) "10," (a) (b) (c) (d) "11," "18," "19," "20," "21," "22," "23," "24," "25," "26," "27," "28," "29," "30," "31," "32,"

"33," "34," "35," "36," "37," "38," "39," "40," "41," "42," "43," "44," "45," "46," "47," "48," "49," "50," "51," "52," "53," "54," "55," "56," "57," "58," "59," "60," "61," "62," "63," "64," "65," "66," "73," "74," "75," "76," "77," "78," "79," "80," "81," "82," "83," "84," "85," "86," "87," "88," "89," "90," "91," "92," "93," "94," "95," "96," "97," "98," "99," "100," "105," "106," "129," "130," "131" and "132."

3. Deny each and every allegation contained in paragraphs "101," "102," "103," "104," "116," "117," "118," "119," "120," "121," "122," "123," "133," "134," "135," "136," "137," "138," "139," "140," "141," in so far as it may be deemed to relate to the answering defendants, and as to the remaining allegations in said paragraphs deny knowledge or information sufficient to form a belief as to the truth thereof.

4. Defendants deny each and every allegation contained in paragraph "15" and allege that the proper and correct definition of "major producer" is a producer who is engaged in the business of exhibiting motion pictures, in addition to the production thereof; that the true and correct definition of "independent producer" is a producer who is not engaged in the exhibition of motion pictures in addition to the production thereof; that "features" are motion [fol. 3322] picture photoplays of 5,000 feet (usually five reels) or more in length, other than westerns, serials and special subjects as hereinafter defined; feature pictures are divided however, into those which are known as Class "A" features and those features which do not approach the dignity of Class "A" features; a Class "A" feature is one which is suitable for feature billing in the so-called metropolitan de luxe motion picture theatres of the United States; these Class "A" features usually involve a much more substantial investment than do other features by reason of the use of stories commanding a high purchase price and of directors and artists commanding very large salaries; there are rare exceptions where pictures not involving a substantial investment approach the dignity of Class "A" features because of their unexpected and unusual appeal to the public.

A "Special" picture is a motion picture, other than a photoplay, of an educational, descriptive or geographical nature.

There are other pictures in excess of 5,000 feet which are known as "serial" pictures; such pictures are exhibited in instalments, being continued from week to week in a particular theatre in which such serial is being exhibited.

A short subject is a motion picture, which is usually less than 5,000 feet or five reels.

A "star" is a motion picture actor or actress who is outstanding and whose name alone is the main attraction to any picture in which he or she appears. On the other hand, there are a great many "feature" players who are popular but who are not heavily advertised and whose names are ordinarily subordinate to the title of the picture, the director or the star thereof.

[fol. 3323] A western picture is a feature motion picture, and is so designated whether it is more or less than 5,000 feet in length.

A "Western" picture is one which lays great stress upon cowboys, riding of horses, marksmanship and furious fights between heroes and villians, woven into a romantic story, and depicted in a melodramatic manner.

5. Admit the allegations contained in paragraph "67" and further allege that Columbia is one of the independent producers operating in California and maintaining studio facilities in Hollywood.

6. Deny each and every allegation contained in paragraphs "69," "70," and "71," in so far as the same relates to the answering defendants, and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations of said paragraphs; and further answering such paragraphs allege that Columbia produced and distributed the following number of pictures in the following seasons:

Season	*Class A Features*	*Other Features*	*Westerns*	*Special Subjects*	*Serials*
1928-29	4	27	0	0	0
1929-30	4	19	0	0	0
1930-31	6	13	8	0	0
1931-32	6	17	8	0	0
1932-33	6	22	8	0	0
1933-34	6	26	12	0	0
1934-35	6	25	8	0	0
1935-36	5	29	2	0	0

1936-37	6	25	7	0	0
1937-38	10	21	8	0	1
1938-39	7	23	9	0	4
1939-40	5	26	10	0	0

[fol. 3324] In addition to the above, Columbia distributed the following number of pictures in the following seasons, which were produced by other independent producers:

OUTSIDE PRODUCERS

Season	*Class A Features*	*Other Features*	*Westerns*	*Special Subjects*	*Serials*
1928-29	0	0	0	0	0
1929-30	1	0	0	0	0
1930-31	1	7	0	1	0
1931-32	1	3	8	0	0
1932-33	0	4	8	2	0
1933-34	0	3	0	0	0
1934-35	0	4	0	0	0
1935-36	0	4	10	0	0
1936-37	1	6	6	0	0
1937-38	2	7	11	0	3
1938-39	1	5	4	0	0
1939-40	1	11	0	0	4

The number of feature motion pictures produced by all motion-picture companies has increased in recent years. The fact is that all of the producers in the United States from 1927 down to the date of this suit have increased their production of feature pictures, indicating an increase of independent production rather than a decrease thereof.

Upon information and belief the following number of Class "A" features, other features, western, and special subject films were released by all companies including independent and major producers during the following years:

[fol. 3325]

	Independents	*Majors*	*Total*
1927	323	355	678
1928	484	297	781
1929	329	313	642
1930	252	281	533
1931	321	257	578
1932	456	245	701

	Independents	*Majors*	*Total*
1933	406	253	659
1934	506	254	760
1935	537	251	788
1936	452	265	717
1937	508	294	802
1938	522	247	769
1939	492	269	761
Total	5588	3581	9169

These figures have a greater significance when it is considered that there was a revolutionary change in the technique of producing and exhibiting motion pictures in 1928. Prior to that year pictures were made without sound effect. They cost less to produce because no money was required for sound reproducing machinery, technicians, and music royalties; and an entirely new type of actor and actress was required. With the introduction of talking pictures many stars of the silent screen were unable to adapt themselves to the new methods.

After 1928 it became necessary to invade the field of legitimate drama, not only for stories but for artists who were skilled in the art of diction and expression. As a result of this situation all of the picture companies were compelled to bid for such artists, and the salaries of the latter were greatly enhanced in comparison to preceding years.

Another burden added to the cost of producing pictures after 1928 was sound and dialogue effect. The companies [fol. 3326] possessing patents upon the machinery and equipment for recording and reproducing sound and dialogue compelled the payment of substantial royalties for the use of their patented machinery and equipment. In the aggregate these royalties have run into many millions of dollars a year. Moreover, it became necessary after 1928 to employ men skilled in the method of recording and reproducing sound and dialogue. This added another burden to production.

There was still another burden, namely, new machinery and equipment, which made it mandatory to completely overhaul and change all motion picture studios. It was also necessary to employ a great many musicians. Substantial expense was incurred in making recordings and retakes of

sound effects, music and dialogue, all of which had been unnecessary prior to 1928.

In the field of foreign distribution of motion pictures, it was necessary to have dialogue in foreign languages and superimposed titles. In addition, the laws of many countries require that the sound effects and dialogue be recorded or "dubbed" in the respective foreign countries in which the pictures are being distributed. In addition to that practice, many of the foreign countries required American companies distributing their films therein to purchase films made abroad by subjects or citizens of such foreign countries, referred to as "quotas" and "kontingents." Originally it was possible to comply with these quota or kontingent requirements by purchasing a cheap film made in a foreign country, but more recently there have been enacted in such foreign countries so-called "quality quotas" which require an American distributor of motion pictures to purchase a motion picture produced abroad at a cost of a very substantial sum. In most cases it is impossible to distrib- [fol. 3327] ute motion pictures at a profit unless an adequate foreign market is assured. That market has been seriously curtailed because of war in Europe. The major part of the investment in a motion picture is in the production thereof. Once this production cost is incurred, it is necessary to secure as wide a distribution as possible. All this requires a very substantial investment at the outset and an organization familiar with conditions existing throughout the world, and able to distribute pictures effectively in such countries with an eye to these various problems and conditions.

Columbia has substantially increased its production schedule on "A" features, other features and westerns since 1928 as compared with prior years. For the four years of its existence prior to 1928, Columbia produced an average of 22 Class "A" features, other features and westerns at an average annual cost of $729,370. Since 1928, and through the 1939-40 season it has produced an average of 44 * pictures annually at an average annual cost of $5,981,100. The

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* This includes "A" features, other features, westerns, special subjects and serials.

following figures for the last twelve years show the increased expenditure for production by Columbia:

	Amount Spent in Production
1928-29	$ 1,632,300
1929-30	2,523,400
1930-31	4,182,800
1931-32	3,614,100
1932-33	4,304,400
1933-34	5,198,200
1934-35	6,163,300
1935-36	7,053,800
1936-37	6,728,000
1937-38	11,499,200
1938-39	9,505,300
1939-40	9,368,600

[fol. 3328] In order to carry out this increase, Columbia was compelled to invest a larger amount of capital. It spends a great deal more money in producing pictures at the present time than it spent years ago. Notwithstanding the tremendous amounts of capital necessary to finance the production and distribution of motion pictures, there has been an increase in independent production not only by Columbia, but by other independent producers.

Many pictures of independent producers have had wide distribution throughout the United States, including metropolitan areas.

Moreover, the number of pictures produced each year is no index of the increased activities of producers in recent years. As a rule the feature pictures within recent years are anywhere from five to ten reels in length, whereas prior to 1928 features were, as a rule, five reels in length, with a few exceptions. In the production of a feature picture a great many scenes are taken and a great deal of footage is consumed which never sees the light of day. This added cost is brought about by the desire of producers to perfect a more artistic result. It is not uncommon for a producer to make 100,000 feet of film, which is subsequently edited and cut down to ten reels and oftentimes less.

7. Deny each and every allegation contained in paragraph "16" and allege that the true definition of a "major distributor" is a distributor who is engaged in the business of

producing and exhibiting motion pictures, in addition to the distribution thereof.

The true definition of an "independent distributor" is one who is not engaged in the exhibition of motion pictures.

[fol 3329] The true definition of "block booking" is the licensing under a single contract of all or a percentage or part of the pictures to be released by the producer or distributor during a given season.

A. Answering the allegations contained in paragraph "17", defendants deny the allegations therein contained, and allege that the definitions contained in that paragraph are of no practical value and are not currently used in the motion picture industry; that the true distinction between theatres depends not upon their affiliation or lack of affiliation with a producer of motion pictures, but rather upon whether the management of or booking for such theatre is done on the basis of one single theatre or on the basis of managing or booking for several theatres. In the former case, the theatre and the owner thereof is referred to as an "independent"; in the latter case the theatre or the owner threof is referred to as a "circuit".

9. Deny any knowledge or information sufficient to form a belief as to paragraph "107," so far as it relates to the other defendants, and denies same in so far as it may be deemed to relate to the answering defendants except that the answering defendants admit that from time to time separate contracts are made with exhibitors for the exhibition of a varying number of photoplays released by Columbia and that such license agreements are negotiated at varying times during a so-called "motion picture season."

10. Deny each and every allegation of paragraph "108," except that defendants admit that the quality of feature pictures, as box-office attractions, varies widely.

[fol. 3330] 11. Deny each and every allegation contained in paragraphs "109," "110," "111," "112," "113," "114," "115," except that defendant admits that Columbia makes exhibition license agreements with various exhibitors for the exhibition of feature pictures distributed by Columbia.

12. Deny each and every allegation contained in paragraphs "140," "141" insofar as same allege that production and exhibition of motion pictures is in or is a part of interstate trade or commerce.

13. Deny each and every allegation contained in paragraphs "142," "143," "144," "145," "146," "147," "148," and "149," and allege that these defendants do not dominate and control, directly or indirectly, any branch of the motion picture business, and have not and do not combine, conspire or participate with any other persons, firms or corporations in any attempt to secure the control thereof, directly or indirectly. Columbia is an independent producer and distributor of motion pictures, and has been such since its organization in 1924. At its inception its capital stock consisted of 2,500 shares of common stock of the par value of $100 each.

From the outset, Columbia found it very difficult to secure proper distribution for its pictures. Much as it desired to limit its operations solely to the field of production, it was compelled by reason of the chaotic state of the distribution field, to establish its own exchanges in many cities throughout the United States. It was producing pictures on a modest scale but was finding it difficult to market its product. It was completely at the mercy of local film exchanges who either refused contracts for the distribution of its pictures [fol. 3331] or who offered Columbia such harsh and inequitable terms, that the corporation could not make a fair profit upon its invested capital. These contracts between the corporation and film exchanges throughout the United States were, as a rule, made on a percentage basis, the distributor charging a certain percentage of the gross receipts from exhibitors as a distribution charge. In a great many cases these local film exchanges furnished improper and inadequate statements of the gross receipts from exhibitors. The task of checking up on these receipts was burdensome and in many cases, impossible; in some cases, the distributors went out of business or became insolvent before any adequate check-up could be made. This method of distribution was haphazard, inefficient and costly. Among the factors which brought about the acquisition of Columbia's own distributing agencies were:

(a) dissatisfaction with the method of distribution;

(b) the uncertainty entertained by Columbia that it was getting its proper shares of the monies resulting from the distribution of the picture;

(c) the inability to market all pictures produced;

(d) situations developed where one year's product would be turned over to certain state-right distributors while the next year's product would be turned over to another, and so on, which made it very difficult to ascertain or anticipate what results could be secured from the distribution in order to secure adequate financing for future pictures; and

[fol. 3332] (e) the establishment by Columbia of its own distributing agencies throughout the country would not only secure to Columbia a nation-wide distribution of the pictures but also, no part of the proceeds would have to be paid to state-right distributors.

Although Columbia was not in a position at the time to finance its own exchanges, the need for distributing its own pictures was so great that the corporation was compelled to arrange for finances in order to enable it to establish and operate its own exchanges for distribution.

In March of 1929, Columbia entered into an agreement with bankers in the City of New York, for a financing plan. Said bankers undertook to underwrite for the company, 25,000 shares of no par value preferred stock. The charter of the company was amended to provide for an authorized capital stock of 300,000 shares of common and 25,000 shares of preferred. The corporation sold to the bankers the 25,000 shares of preferred stock for $750,000, and the bankers agreed to sell said stock at public offering, which they did.

With the moneys so received from the bankers, Columbia organized and established its own film exchanges for distribution in various cities throughout the United States. For the first time it was enabled to secure adequate and fair returns from the distribution of its pictures. The distribution of motion pictures is wholly unlike the sale of other merchandise to independent jobbers. In the first place, motion pictures are never sold outright. They are merely licensed for limited periods and for certain purposes. Secondly, where distribution is made to an independent agency, such distribution is on a percentage basis and not on the [fol. 3333] basis of an outright sale. The necessities of the motion picture business, as it is and must be conducted at the present time, require that a producer of motion pictures to be successful, must invest in facilities for the distribution of its own pictures.

Columbia having found that distribution of its pictures by itself was the only practical means of marketing its pictures, decided to extend the field of distribution to European countries. For that purpose it required further capital. Accordingly, in April, 1930, Columbia sold additional shares of stock to bankers for $1,600,000, and such bankers, in turn, sold such stock to the public. There are now over 1,000 investors of Columbia scattered throughout the country. The proceeds of this sale were utilized by Columbia in opening up foreign exchanges for distribution and for other corporate purposes. At no time, since 1929, has Columbia distributed its pictures through any of the other defendants herein, nor has Columbia distributed pictures produced by any of the other defendants through Columbia exchanges. It has, however, distributed, since 1929, a substantial number of pictures produced by other independent producing companies. Such pictures have consisted from time to time, of Class "A" features, other features, shorts, comedies, westerns, serials and special subjects.

In negotiating for and entering into contracts for the distribution of the pictures of independent producers, Columbia has encountered vigorous competition from other distributors of motion pictures. Independent producers are constantly changing from one company to another in contracting for the distribution of their pictures.

Examples of such changes from one distributor to another are exceedingly numerous. A few will suffice to show the practice.

[fol. 3334] Walt Disney, the creator of famous cartoon characters, such as "Mickey Mouse," "Minnie Mouse," "Donald Duck," and more recently "Snow White and the Seven Dwarfs," "Pinnochio" and "Fantasia," originally distributed his pictures through one Pat Powers. Thereafter he made a contract for distribution through Columbia, and subsequently with United Artists Corporation and presently with R.K.O. Radio Pictures, Inc. Many distributing companies are now competing for the distribution of Walt Disney's future pictures.

David Loew, a famous independent producer, originally distributed his pictures through R.K.O. Radio Pictures, Inc.; then distributed through Columbia; he is now distributing through United Artists.

Walter Wanger, a producer of note, produced pictures for Paramount Pictures, Inc., for a period of approximately

ten years; then for Columbia; later for Metro-Goldwyn-Mayer Corporation; then back to Paramount Pictures, Inc. His pictures are presently being distributed by United Artists Corporation.

Emanuel Cohn, whose producing unit is known as the Major Producing Corporation, originally produced pictures for Paramount Pictures, Inc.; then for Columbia; then returned to Paramount Pictures, Inc., and is now negotiating with several companies for the future distribution of his pictures.

B. P. Schulberg, who for many years was in charge of production at Paramount Pictures, Inc., had his pictures distributed by Columbia after he severed his connection with Paramount Pictures, Inc.; more recently his pictures have been distributed by Metro-Goldwyn-Mayer Corporation.

Hal Roach, producer of a unique type of picture, originally had his pictures distributed by Pathe Exchange, Inc.; at present he distributes some of his pictures through Metro-[fol. 3335] Goldwyn-Mayer Corporation, and some of his pictures through United Artists Corporation.

Sol Lesser, whose producing unit is known as Principal Productions, Inc., originally distributed through First National Pictures, Inc., and through various states rights organizations; he now divides the distribution of his pictures between 20th-Century-Fox Film Corporation and R.K.O. Radio Pictures, Inc., and has also distributed several pictures through Columbia.

David Selznick, originally produced pictures for R.K.O. Radio Pictures, Inc.; then switched to Metro-Goldwyn-Mayer Corporation, and finally distributed through United Artists Corporation. He distributed his picture "Gone With The Wind," through Metro-Goldwyn-Mayer Corporation.

Many independent producers contract with Columbia and other producers on a one-picture basis, and such producers decide solely for themselves the company for which they will produce their pictures or through which they will have their pictures distributed. All the companies are in competition for the pictures of such independent producers.

At no time has Columbia extended to any of the other defendants the facilities of its distribution exchanges in any shape, manner or form, directly or indirectly. The business of production and distribution engaged in by Co-

lumbia has been separate and distinct from the business of the other defendants herein; and at no time, has Columbia permitted or suffered any other defendant to have any part in its production or distribution business, nor has it at any time or in any way directly or indirectly, had any part in the production or distribution business of the other defendants herein or any of them.

[fol. 3336] National distribution of motion pictures and distribution of motion pictures throughout the world, in order to bring a fair and adequate return to a producer of pictures, requires a substantial investment of capital and an efficient organization. While historically, the motion picture business was split up into three groups, production, distribution and exhibition, as a practical and feasible matter, production and distribution today go hand in hand, each a corollary to the other. There are a substantial number of independent distributors in the United States, but none of these distributors, with the exception of defendant United Artists Corporation, has an efficient organization or a sufficient number of local exchanges throughout the United States and European countries, to afford a world-wide distribution of a motion picture. The invested capital required in the production of motion pictures, especially since the advent of talking pictures in 1928, runs into very substantial amounts, ranging from $100,000 to $2,000,000 for each picture.

The average cost of Class "A" features released by Columbia each season from 1932-33 to 1938-39 is as follows:

1932-3	1933-4	1934-5	1935-6	1936-7
$202,900	$347,200	$456,800	$587,000	$517,200
	1937-8	1938-9	1939-40	
	$733,400	$737,300	$883,500	

The average cost of other features released by Columbia during the same period is as follows:

1932-3	1933-4	1934-5	1935-6	1936-7
$101,100	$ 94,700	$113,700	$126,000	$100,800
	1937-8	1938-9	1939-40	
	$112,000	$102,100	$129,800	

[fol. 3337] If Columbia were compelled to desist from distributing its own pictures, it would find that pictures in which it had invested millions of dollars annually, would be

incompetently and inefficiently handled, improperly exploited and the financial returns wholly inadequate. It is impossible to secure the necessary financial backing for any producer of motion pictures which does not have an efficient distributing organization. The thousand and more investors in Columbia have made their respective investments in Columbia's securities in reliance upon its ability to distribute its own pictures. All of the motion pictures of Columbia are copyrighted.

The field of production and distribution of motion pictures has gradually merged as a matter of necessity. This has been due to the great advance in business and to the great amount of money invested in the production of pictures which make it requisite that producers have their own facilities for protecting their respective investments. Distribution today is actually a part of production and cannot be divorced from production. It is only when the producer has a very small investment in his motion picture and has little to lose, or when the distributor contributes to the cost of his production, that the producer is willing to entrust its distribution to others.

[fol. 3338]

(a) During the exhibition years 1934–35, down through 1940 and part of 1940–1941, the following features released by Columbia were exhibited in the metropolitan houses of defendant Warner Bros. Pictures, Inc., as hereinafter indicated:

City	Theatre	1934–5 Pictures	1935–6 Pictures	1936–7 Pictures	1937–8 Pictures	1938–9 Pictures	1939–40 Pictures	1940–41* Pictures
Albany	Strand	0	0	0	0	0	0	0
Baltimore	Stanley	0	0	0	0	1	0	0
Brooklyn	Strand	16	6	14	16	11	21	7
Charlotte	Broadway	9	9	7	15	8	12	5
Cleveland	Hippodrome	4	3	3	2	5	4	2
Los Angeles	Downtown	12	0	3	1	0	3	0
	Hollywood	0	0	3	1	1	0	0
Memphis	Warner	1	0	0	2	0	0	0
Milwaukee	Warner	0	0	0	0	0	0	0
Newark	Branford	12	3	3	4	8	12	5
	Capitol	12	2	5	5	18	0	5
New Haven	Sherman	0	0	0	3	0	0	0
New York City	Strand	0	0	0	0	0	0	0
Oklahoma City	Midwest	4	1	0	0	0	0	0
	Warner	0	0	0	0	0	0	0
Philadelphia	Aldine	0	2	0	0	0	1	0
	Boyd	1	1	3	5	0	1	0
	Earle	4	4	3	6	2	1	1
	Fox	0	0	3	1	3	0	1
	Stanley	4	2	1	0	2	5	1
	Karlton	5	2	4	2	3	6	0
	Keith's	2	3	2	2	2	1	1
	Staunton	5	4	7	3	5	6	0
Pittsburgh	Stanley	3	0	0	0	0	0	0
Washington	Earle	7	6	8	7	6	7	3
	Metropolitan	9	6	8	10	10	13	3

* 1940–41 is incomplete.

[fol. 3339]

(b) During the exhibition years 1934–35 down through 1940 and part of 1940–41 the following features released by Columbia were exhibited in the metropolitan houses of defendant Loew's Inc.; as hereinafter indicated:

City	Theatre	1934–5 Pictures	1935–6 Pictures	1936–7 Pictures	1937–8 Pictures	1938–9 Pictures	1939–40 Pictures	1940–41* Pictures
Atlanta	Grand	0	0	0	0	0	0	0
Baltimore	Century	0	0	0	0	0	0	0
Boston	Orpheum	7	18	19	22	17	22	5
	State	24	18	19	22	17	23	5
Brooklyn	Metropolitan	0	1	0	0	0	0	0
Cleveland	State	0	0	0	0	0	0	0
	Stillman	0	0	0	0	0	0	0
Houston	State	0	0	0	0	0	0	0
Indianapolis	Palace	10	23	22	21	24	28	7
Kansas City	Midland	0	0	22	25	29	29	12
Memphis	State	0	0	0	0	0	0	0
Newark	State	0	26	23	26	23	20	3
New Haven	Poli's	20	16	16	14	15	18	6
	College	11	20	13	15	9	15	7
New Orleans	State	0	0	0	0	0	0	0
New York City	Capitol	0	1	0	1	0	0	0
	State	5	3	3	6	3	6	1
Pittsburgh	Penn	1	0	0	0	0	0	0
St. Louis	State	0	0	0	7	15	11	3
	Capitol	0	0	0	0	0	0	0
Washington	Palace	0	0	0	0	0	0	0

* 1940–41 is incomplete.

(c) During the exhibition years 1934–35, down through 1940 and part of 1940–41 the following features released by Columbia were exhibited in the metropolitan houses of defendant Radio-Keith-Orpheum Corporation, as hereinafter indicated:

City	Theatre	1934–5 Pictures	1935–6 Pictures	1936–7 Pictures	1937–8 Pictures	1938–9 Pictures	1939–40 Pictures	1940–41* Pictures
Boston	Keith's Memorial	4	2	1	0	3	1	0
	Boston	1	6	0	11	0	30	3
Brooklyn	Albee	0	2	0	0	0	0	0
Chicago	Palace	0	0	0	0	0	0	0
Cleveland	Allen	5	6	5	7	4	8	2
	Palace	1	5	5	6	4	5	1
Cincinnati	Palace	3	1	3	1	2	3	1
	Albee	2	3	0	1	1	3	1
	Capitol	1	0	1	0	0	4	1
	Shubert	4	6	1	7	3	4	0
	Grand	3	1	3	2	0	0	1
	Lyric	0	0	4	1	3	4	3
Denver	Orpheum	2	0	0	0	0	0	0
Kansas City, Mo.	Main Street	0	0	0	0	0	0	0
Des Moines	Orpheum	34	36	17	20	17	31	9
Los Angeles	Hillstreet	0	0	0	25	23	28	8
	Pantages	4	0	0	25	23	28	8
Minneapolis	Orpheum	5	6	4	2	4	6	1
Newark	Proctor's	3	0	0	1	1	0	0
N. O.	Orpheum	6	7	6	7	6	9	3
New York City	Palace	1	0	0	0	0	0	0
Omaha	Brandeis	17	22	22	21	19	24	7
San Francisco	Golden Gate	0	3	0	1	1	0	0
St. Paul	Orpheum	13	10	5	1	4	4	1
Washington	Keith's	0	0	0	0	1	0	0

* 1940–41 is incomplete.

[fol. 3341]

(d) During the exhibition years 1934–35, down through 1940 and part of 1940–41 the following features released by Columbia were exhibited in the metropolitan houses of defendant National Theatre Corporation, as hereinafter indicated:

City	Theatre	1934–5 Pictures	1935–6 Pictures	1936–7 Pictures	1937–8 Pictures	1938–9 Pictures	1939–40 Pictures	1940–41* Pictures
Denver	Denver	3	3	4	5	4	12	6
	Broadway	10	6	12	4	2	2	0
	Paramount	9	25	26	20	16	11	5
	Tabor	6	7	11	2	32	32	9
Kansas City, Mo.	Uptown	0	0	0	0	0	0	0
	Tower	20	17	0	0	1	1	0
Los Angeles	Lowe's State	0	0	0	2	0	0	0
	Chinese	0	0	0	2	0	0	0
	United Artists	0	0	0	2	1	0	0
	Four Star	0	0	0	1	0	0	0
Milwaukee	Wisconsin	1	1	2	2	3	0	0
	Palace	10	13	10	18	13	19	4
Portland, Ore.	Paramount	5	3	9	9	11	14	6
	Mayfair	19	10	6	6	3	2	3
	Orpheum	1	5	7	11	8	1	1
San Francisco	Fox	10	0	0	0	0	0	0
	Lowe's Warfield	0	0	0	0	0	0	0
	Paramount	0	0	0	0	0	0	0
	St. Francis	0	0	0	0	0	0	0
Seattle	Fifth Avenue	0	0	0	0	0	0	0
	Paramount	0	0	0	0	0	0	0
	Orpheum	0	0	0	0	0	0	0
	Music Hall	0	0	0	0	0	0	0
	Music Box	0	0	0	0	0	0	0
	Blue Mouse	0	0	0	0	0	0	0

* 1940–41 is incomplete.

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[fol. 3342]

(e) During the exhibition years 1934–35, down through 1940 and part of 1940–41 the following features released by Columbia were exhibited in the metropolitan houses of defendant Paramount Pictures, Inc., as hereinafter indicated:

City	Theatre	1934–5 Pictures	1935–6 Pictures	1936–7 Pictures	1937–8 Pictures	1938–9 Pictures	1939–40 Pictures	1940–41* Pictures
Atlanta	Capitol	0	0	0	0	0	0	0
	Fox	0	0	0	0	0	0	0
	Paramount	0	0	0	0	0	0	0
	Georgia	0	0	0	0	0	0	0
Boston	Metropolitan	0	0	0	0	0	0	0
	Fenway	2	0	0	0	0	0	0
	Paramount	0	0	0	0	0	0	0
Brooklyn	Paramount	0	0	2	4	10	10	2
Buffalo	Buffalo	0	0	0	0	0	0	0
	Century	0	0	0	0	0	0	0
	Great Lakes	0	0	0	0	0	0	0
	Hippodrome	0	0	0	0	0	0	0
Charlotte	Carolina	2	2	3	2	5	6	2
	Imperial	2	5	5	2	3	1	0
	State	16	16	13	7	13	15	2
Chicago	Apollo	1	3	1	4	0	1	1
	Chicago	4	2	3	4	4	4	1
	Garrick	5	4	3	1	2	5	1
	Oriental	0	7	8	2	11	5	3
	Roosevelt	2	0	0	1	3	0	0
	United Artists	0	1	0	0	0	0	0
Dallas	Capitol	19	19	18	21	20	16	9
	Majestic	2	0	0	3	4	4	1
	Melba	3	12	8	8	4	0	0
	Palace	3	2	3	2	0	3	1
	Rialto	0	1	1	0	3	8	2

* 1940–41 is incomplete.

[fol. 3343]

City	Theatre	1934–5 Pictures	1935–6 Pictures	1936–7 Pictures	1937–8 Pictures	1938–9 Pictures	1939–40 Pictures	1940–41* Pictures
Des Moines	Des Moines	0	0	4	4	2	0	0
	Paramount	0	0	11	9	9	0	0
	Roosevelt	0	0	2	2	4	0	0
Detroit	Madison	8	7	0	0	0	0	0
	Michigan	0	0	0	0	1	0	0
	State	0	1	0	0	0	0	0
Houston	Kirby	5	10	13	20	15	15	6
	Majestic	3	1	1	2	4	5	2
	Metropolitan	2	4	4	5	2	4	1
Kansas City, Mo.	Newman	0	0	0	0	0	0	0
Memphis	Malco	3	5	8	7	6	9	5
	Strand	9	22	16	22	17	30	13
Minneapolis	State	0	0	4	3	0	1	0
Newark	Paramount	0	0	0	0	0	6	0
New Haven	Paramount	1	0	0	0	0	6	0
New Orleans	Saenger	0	0	1	0	0	0	0
	Tudor	2	0	0	0	0	0	0
New York City	Paramount	0	0	1	0	0	0	0
Oklahoma City	Capitol	0	2	0	0	0	0	0
	Criterion	1	0	0	0	0	0	0
Omaha	Omaha	0	0	0	0	0	0	0
	Orpheum	0	0	0	0	0	0	0
Salt Lake City	Capitol	1	1	5	9	7	22	10
	Paramount	0	0	1	5	2	0	0
	Victory	4	2	12	19	12	0	3
St. Paul	Paramount	0	1	2	2	0	2	1
	Riviera	0	1	4	9	4	1	0
	Tower	9	6	11	13	18	20	11

*1940–41 is incomplete.

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[fol. 3344] 14. Further answering said paragraphs "142" to "149" inclusive defendant Columbia alleges that the following are the only occasions since 1933 on which Columbia has loaned its actors, writers, cameramen, directors, and other technicians to or borrowed artists or technicians from other producers:

In the following instances, players were loaned by Columbia to *defendant* major producers since 1933 for the pictures indicated:

1933

Company	Player	Picture
Fox Film Corp.	Walter Connolly	Paddy, the Next Best Thing
"	Richard Cromwell	Hoopla
"	"	House of Connolly
Metro, Goldwyn-Mayer Corp.	Donald Cook	Viva Villa
Paramount Productions	Richard Cromwell	Pay Day
"	Donald Cook	Jenny Gerhardt
"	Peter Adams	Pay Day
RKO Studios	Walter Connolly	Success Story
"	Donald Cook	Long Lost Father
Warner Bros. Pictures	"	The Word Changes
"	Genevieve Tobin	Goodbye Again

1934

Fox Film Corp.	Walter Connolly	Charlie Chan's Challenge
"	"	Servant's Entrance
"	Richard Cromwell	Life Begins at Forty
"	Florence Rice	East River
Metro-Goldwyn-Mayer Corp.	Raymond Walburn	Ambulance Call
"	Donald Cook	The Night Is Young
"	John Buckler	David Copperfield
Paramount Productions	Robert Allen	Menace
"	Walter Connolly	Father Brown
"	Richard Cromwell	Bengal Lancers
"	Joseph Schildkraut	Cleopatra
RKO Studios	Arthur Hohl	Romance in Manhattan
Warner Bros. Pictures	Victor Jory	Midsummer Night's Dream

[fol. 3345]

1935

Fox Film Corp.	Tala Birell	Hold That Tiger
"	Victor Kilian	Bad Boy
"	Raymond Walburn	Gentle Grafter
"	"	Red Heads on Parade
"	"	Road to Romance
"	Donald Cook	Secret Lives
Metro-Goldwyn-Mayer Corp.	Victor Kilian	Riff Raff
"	Raymond Walburn	The Great Ziegfeld
"	Peter Lorre	Mad Love
"	Donald Cook	Casino Murder Case
"	Douglas Dumbrille	Naughty Marietta
Paramount Productions	Walter Connolly	So Red The Rose
"	George Murphy	Woman Trap
"	Douglas Dumbrille	Peter Ibetson

Company	Player	Picture
"	James Blakeley	Two In A Tower
"	Richard Cromwell	Annapolis Farewell
"	"	MacFadden's Flats
Radio Pictures Corp.	Ann Sothern	Hurry For Love
"	Thurston Hall	"
"	Arthur Hohl	Village Tale
"	"	Husk
"	Wyrley Birch	Last Days of Pompeii
"	Robert Middlemass	The Green Shadow
	1936	
Metro-Goldwyn-Mayer Corp.	Herman Bing	Maytime
"	Walter Connolly	The Good Earth
"	"	Libeled Lady
"	Thurston Hall	Three Wise Guys
"	Thomas Mitchell	Man of the People
"	Raymond Walburn	Absolute Quiet
"	"	Born to Dance
"	"	Three Wise Guys
Paramount Productions	Ralph Bellamy	Johnny Get Your Gun
"	Herman Bing	Champagne Waltz
"	Lloyd Nolan	Texas Rangers
"	Victor Kilian	Invitation to Happiness
"	Lionel Stander	I Loved a Soldier
"	Douglas Dumbrille	The Princess Comes Across
RKO Studios, Inc.	Herman Bing	Street Girl
"	Thurston Hall	Once Over Lightly
"	Douglas Dumbrille	Witness Chair
"	"	M'Liss

[fol. 3346]

	1936	
20th Century-Fox Film Corp.	Jean Dixon	To Mary With Love
"	Walter Connolly	Nancy Steele is Missing
"	Victor Kilian	Banjo on My Knee
"	"	Death in Paradise Canyon
"	"	Romona
"	"	Seventh Heaven
"	"	Wooden Crosses
	1937	
Metro-Goldwyn-Mayer Corp.	Lionel Stander	Last Gangster
"	Raymond Walburn	Broadway Melody of 1937
Paramount Pictures	Richard Arlen	Artists & Models
"	Melvyn Douglas	The Angel
"	"	I Met Him in Paris
"	John Gallaudet	Double or Nothing
"	Thomas Mitchell	The Years Are So Long
"	Gene Morgan	"
"	Raymond Walburn	High, Wide & Handsome
RKO Radio Pictures	Chester Morris	Flight From Glory
20th Century-Fox Film Corp.	Marc Lawsence	Charlie Chan on Broadway
"	Raymond Walburn	Thin Ice
Warner Bros. Pictures	Ralph Bellamy	Food For Scandal
"	Walter Connolly	First Lady
"	Thurston Hall	Return from Limbo
"	Victor Kilian	Tovarich

1938

Company	Player	Picture
Loew's Inc.	Walter Connolly	Too Hot to Handle
RKO Radio Pictures Inc.	Ralph Bellamy	Carefree
"	Rita Hayworth	Geo. O'Brien #4
20th Century Fox Film Corp.	Marc Lawrence	While New York Sleeps
"	Raymond Walburn	The Legion Marches On
Warner Brothers Pictures, Inc.	Ralph Bellamy	Boy Meets Girl
"	Walter Connolly	All Rights Reserved

1939

Loew's Inc.	Walter Connolly	Maiden Voyage
"	Marc Lawrence	Sergeant Madden
Warner Bros.	Edith Fellowes	Gantry the Great

[fol. 3347]

1940

Loew's Inc.	Rita Hayworth	Susan and God
20th Century-Fox	Don Beddoe	Charley Chan's Oriental Cruise
"		Bad Girl
Warner Bros.	Rita Hayworth	Strawberry Blonde

1941

Warner Bros.	Rita Hayworth	Affectionately Yours

The following artists, other than players, were loaned by Columbia to *defendant* major producers since 1933 for the pictures indicated:

1933

Company	Artist	Picture
Metro-Goldwyn-Mayer Corp.	Norman Krasna (Writer)	Viva Villa

1935

Radio Pictures Corp.	Joseph August (Cameraman)	Mr. Grant
"		The Informer

1936

Metro-Goldwyn-Mayer Corp.	Zoe Atkins (Writer)	Camille

1937

Paramount Pictures	Stephen Avery (Writer)	Artists & Models

1938

RKO Radio Pictures, Inc.	Paul Jarrico (Writer)	Story: Beauty for the Asking

1940

Paramount	Lewis Meltzer (Writer)	New York Town
Paramount	Charles Vidor (Director)	New York Town

[fol. 3348]

In the following instances, players were loaned by Columbia to *independent* producers since 1933 for the pictures indicated:

Company	Player	Picture
	1933	
Maxwell Cohn	Diane Sinclair	Dark Waters
Liberty Pictures	Richard Cromwell	When Strangers Meet
Meteor Pictures	Barbara Weeks	Rusty Rides Alone
Chas. R. Rogers Talking Pictures	Walter Connolly	Eight Girls in a Boat
	1934	
Foy Productions	Charles Gabin	That's Gratitude
"	"	Call To Arms
"	Sheila Mannors	"
Liberty Productions	Ines Courtney	Sweepstakes Annie
Chas. R. Rogers Talking Pictures	Raymond Walburn	I Married An Actress
Samuel Goldwyn	Ann Sothern	Treasure Hunt
Select Productions	Donald Cook	Gigolette
20th Century Pictures	Ann Sothern	Folies Bergere
Universal Pictures	Geneva Mitchell	Night Life of the Gods
	1935	
Central Films, Ltd.	Edith Fellows	Tugboat Princess
Conn Pictures Corp.	Gloria Shea	Black Gold
Larry Darmour	Joan Perry	Heir to Trouble
"	Geneva Mitchell	The Twain Shall Meet
Foy Productions	Jack Holt	Gimpy
Gaumont-British Pictures Corp.	Peter Lorre	Secret Agent
H. M. Pictures Corp.	Walter Connolly	Soak The Rich
Liberty Pictures	Ines Courtney	Dizzy Dames
Majestic Pictures Corp. of Calif.	Donald Cook	Thunder in the Streets
Mascot Pictures	Victor Jory	Stream Line Express
"	Arthur Hohl	One Frightened Night
Principal Pictures	Douglas Dumbrille	Calling of Dan Matthews
20th Century Pictures	Robert Allen	Buccaneer
"	Thurston Hall	Metropolitan
"	Raymond Walburn	Thanks A Million
"	Arthur Hohl	It Had To Happen
"	Douglas Dumbrille	Richelieu
Universal Pictures	Jean Arthur	Diamond Jim Brady

[fol. 3349]

	1936	
Central Films	Henry Mollison	Secret Patrol
"	Charles Starrett	Gun Smoke & Secret Patrol
Larry Darmour	Martha Tibbetts	Ranger Courage
"	"	Phantom Fighter
"	Robert Allen	Law of the Ranger
"	"	Phantom Fighter
"	"	Ranger Courage
"	"	Rio Grande Ranger
Principal Productions	Ralph Bellamy	The Recreation of Brian Kent
Richard A. Rowland Prods.	Charles Starrett	Love & Laughter
Hal Roach Studios, Inc.	Raymond Walburn	Mr. Cinderella
Selznick International	Lionel Stander	A Star is Born
Universal Pictures Co.	Thurston Hall	We've Had Our Moments
"	Raymond Walburn	I Hate Horses
"	Jean Dixon	My Man Godfrey

Company	Player	Picture
	1936	
Walter Wanger Productions	Lloyd Nolan	Big Brown Eyes
	1937	
Samuel Goldwyn, Inc., Ltd.	Mary Astor	Stella Dallas
"	Leona Maricle	Woman's Touch
"	Thomas Mitchell	Hurricane
Harold Lloyd	Raymond Walburn	Professor Beware
Republic Pictures	Patricia Farr	The Lady Misbehaves
Selznick International Pictures	Nana Bryant	Tom Sawyer
"	Walter Connolly	Is Nothing Sacred
"	Victor Kilian	Tom Sawyer
"	Lionel Stander	Let Me Live
Harry Sherman Productions	Jean Parker	The Barrier
Universal Pictures Co.	Thurston Hall	Oh, Doctor
Samuel Goldwyn Productions	Jane Hamilton	Goldwyn Follies
Central Films, Ltd.	John Gallaudet	Murder is News
"	"	Manhattan Whirlwind
"	Rita Hayworth	Devil in Ermine
"	"	Face Work
"	Bill Irving	"
"	"	Devil in Ermine
[fol. 3350]		
Central Films, Ltd.	Rosalind Keith	Manhattan Whirlwind
"	Eddie Laughton	Face Work
"	"	Devil in Ermine
"	Marc Lawrence	Face Work
"	George McKay	Devil in Ermine
"	"	Face Work
"	"	Murder Is News
"	"	Manhattan Whirlwind
"	Iris Meredith	Murder Is News
"	Charles Quigley	Face Work
"	"	Devil in Ermine
"	Frank C. Wilson	Murder Is News
Larry Darmour	Robert Allen	Ranger Feud
"	"	Ghost Ranger
"	Rosalind Keith	Murderers Welcome
	1938	
Adventure Serials	Don Terry	Secrets of Treasure Island
Larry Darmour	Jacqueline Wells	Flight to Nowhere
Harold Lloyd	Thurston Hall	Professor Beware
Principal Prods., Inc.	Dick Curtis	Rawhide
"	Arthur Loft	Rawhide
Universal Pictures Co., Inc.	Ralph Belamy	The Crime of Dr. Hallick
	1939	
Larry Darmour	Godron Elliott	The First Ranger
Irving Starr Productions	Edith Fellowes	Passport to Happiness
"	Rita Hayworth	"
	1940	
David L. Loew-Albert Lewin, Inc.	Glenn Ford	So Ends Our Night
Frank Lloyd Pictures, Inc.	Cary Grant	Howards of Virginia

[fol. 3351]

In the following instances, artists other than players were loaned by Columbia to *independent* producers since 1933 for the pictures indicated:

Company	Artist	Picture
	1933	
Meteor Pictures	Ross Lederman (Dir.)	Whirlwind
"	"	Rusty Rides Alone
Chas. R. Rogers Talking Pictures	Albert Rogel (Dir.)	
	1934	
Universal Pictures	Edward Buzzell (Dir.)	Transient Lady
	1936	
Central Films	Del Lord (Dir.)	Why Let 'Em Live
"	David Selman (Dir.)	Secret Patrol
	1937	
Central Films, Ltd.	Leon Barsha (Dir.)	Face Work
"	"	Devil in Ermine
"	"	Murder Is News
"	"	Manhattan Whirlwind
	1938	
Bobby Breen Productions	Fred Niblo, Jr. (Writer)	Story: Fisherman's Wharf
Samuel Goldwyn, Inc., Ltd.	Paul Jarrico (Writer)	Story: Duchess of Broadway
	1939	
Edward Small Productions	Charles Vidor (Director)	My Son My Son
Universal Pictures	John Brahm (Director)	Rio
Frank Lloyd Productions, Inc.	Sidney Buchman (Writer)	Howards of Virginia
Edward Small Productions	Lewis Meltzer (Writer)	The Legend of Sleepy Hollow

[fol. 3352]

In the following instances, players were borrowed by Columbia from *defendant* major producers since 1933 for the pictures indicated:

Company	Player	Picture
	1933	
Fox Film Corp.	Victor Jory	My Woman
"	Spencer Tracy	Man's Castle
"	Miriam Jordan	Let's Fall in Love
Metro-Goldwyn-Mayer Corp.	Mary Carlisle	East of Fifth Avenue
"	May Robson	Lady for a Day
"	Jean Parker	"
"	Mary Carlisle	Once to Every Woman
"	Clark Gable	It Happened One Night
Paramount Productions	Randolph Scott	Cocktail Hour
"	Carole Lombard	Brief Moment
"	Helen Twelvetrees	Goin' to Town
"	Roscoe Karns	It Happened One Night
RKO Studios	Bruce Cabot	Criminal Within (Shadows of Sing Sing)
"	Betty Furness	Let's Fall in Love
"	William Gargan	Line-Up

Company	Player	Picture
Warners Bros. Pictures	Claire Dodd	Rules for Wives (Ann Carver's Profession)
"	"	My Woman
"	Guy Kibbee	Apple Annie (Lady for a Day)
"	Warren William	"
"	Glenda Farrell	"
"	Arthur Kohl	Man's Castle
"	Glenda Farrell	"
	1934	
Fox Film Corp.	Norman Foster	Evidence (Behind the Evidence)
"	Mona Barrie	One Night of Love
"	"	I'll Fix It
Metro-Goldwyn-Mayer Corp.	Irene Hervey	White Lies
"	May Robson	Mills of the Gods
"	James Durante	Carnival
"	Nat Pendleton	Defense Rests
"	May Robson	Orchids & Onions (Lady by Choice)
"	Myrna Loy	Broadway Bill
"	Douglas Dumbrille	"

[fol. 3353]

	1934	
Paramount Pictures	Roscoe Karns	Twentieth Century
"	Allison Skipworth	The Captain Hates the Sea
"	Gail Patrick	Murder in the Studio (Crime of Helen Stanley)
RKO Studios	Wynne Gibson	The Captain Hates the Sea
Metro-Goldwyn-Mayer Corp.	Robert Young	Whom the Gods Destroy
"	Stuart Erwin	The Party's Over
Warner Bros. Pictures	Allen Jenkins	Whirlpool
"	Lyle Talbot	One Night of Love
	1935	
Metro-Goldwyn-Mayer Corp.	Louis Hayward	Feather in Her Hat
"	Shirley Ross	Devil's Squadron
"	Bruce Cabot	Mad Money (Don't Gamble with Love)
"	William Tannen	Rich Man's Daughter (She Couldn't Take It)
"	Leo Carrillo	Wings of Song (Love Me Forever)
"	Mary Carlisle	Super Speed
Paramount Productions	Wendy Barrie	Feather in Her Hat
"	Gail Patrick	The Lone Wolf (The Lone Wolf Returns)
"	Herbert Marshall	If You Could Only Cook
"	Kathleen Burke	Jim Burke's Boy (Awakening of Jim Burke)
"	Katherine DeMille	The Black Room Mystery
RKO Studios	John Arledge	Panic on the Air
20th Century-Fox Film Corp.	William Stelling	Devil's Squadron
"	Rochelle Hudson	Rolling Along (The Music Goes Round)
"	Jack Haley	Girl Friend
Warner Bros. Pictures	Helen Lowell	Party Wire

[fol. 3354]

1936

Company	Player	Picture
Metro-Goldwyn-Mayer Film Corp.	Virginia Bruce	Lady of Glamour (Women of Glamour)
"	Rosalind Russell	Craig's Wife
"	Billie Burke	"
"	Louise Henry	Road to Nowhere (End of the Trail)
"	Nat Pendleton	Trapped by Television
"	Chester Morris	Queer Money (Counterfeit)
"	Bruce Cabot	Hooded Legion (Legion of Terror)
"	Reginald Owen	Adventure in Manhattan
"	Franchot Tone	Cissy (The King Steps Out)
"	May Robson	Grand Old Woman (Woman in Distress)
Paramount Pictures	Cary Grant	Interlude (When You're in Love)
"	Ida Lupino	Weather or No (Let's Get Married)
Paramount Productions	John Howard	Lost Horizon
"	Benny Baker	Five Spot (Panic on the Air)
RKO Radio Pictures	Margot Grahame	Queer Money (Counterfeit)
20th Century-Fox Film Corp.	Jane Darwell	Craig's Wife
Warner Bros. Pictures	George Brent	More Than a Secretary

1937

Metro-Goldwyn-Mayer Corp.	Betty Furness	With Kind Regards (It Can't Last Forever)
Paramount Pictures, Inc.	Cecil Cunningham	The Awful Truth
"	John Howard	Criminal Code (Penitentiary)
20th Century-Fox Film Corp.	Helen Westley	I Married an Artist
"	"	I'll Take Romance
Warner Bros. Pictures	Joan Blondell	There's Always a Woman
"	Patricia Ellis	Venus Makes Trouble

[fol. 3355]

1938

Loew's, Inc.	Lionel Barrymore	You Can't Take It With You
"	John Beal	Edw. G. Robinson pict. (I Am the Law)
"	James Stewart	You Can't Take It With You
RKO Radio Pictures Inc.	Ann Miller	You Can't Take It With You
"	Anne Shirley	Romantic Age (Girl's School)
"	Katherine Hepburn	Holiday
20th Century-Fox Film Corp.	Gloria Stuart	Lady Lawyer (The Lady Objects)
Loew's Inc.	Virginia Bruce	There's That Woman Again
"	Virginia Weidler	Lone Wolf Spy Hunt
Warner Bros.	Margaret Lindsay	There's That Woman Again

1939

Loew's Inc.	Maureen O'Sullivan	Let Us Live
"	Virginia Weidler	Outside These Walls
"	Guy Kibbee	Mr. Smith Goes to Washington
"	James Stewart	"
"	Allan Curtis	Good Girls Go to Paris

1939

Company	Player	Picture
20th Century-Fox	John Russell	Mr. Smith Goes to Washington
Loew's Inc.	Rosalind Russell	His Girl Friday
Paramount	Fred MacMurray	Too Many Husbands

1940

Paramount	Ray Milland	Doctor Takes a Wife
Warner Bros.	John Litel	Men Without Souls
Loew's Inc.	Florence Rice	The Secret Seven
"	Rosalind Russell	This Thing Called Love

1941

Paramount	Martha O' Driscoll	Her First Beau
"	Jackie Cooper	"
Warner Bros.	George Brent	They Dare Not Love
20th Century-Fox	Jane Withers	Her First Beau

[fol. 3356]

In the following instances, artists other than players were borrowed by Columbia from *defendant* major producers since 1933 for the pictures indicated:

1933

Company	Artist	Picture
Paramount Productions	Seton I. Miller (Writer)	Man of Steel
RKO Studios	Sidney Buchman (Writer)	

1934

RKO Studios	Sidney Buchman (Writer)	

1935

Paramount Productions	Alfred Santel (Director)	Feather in Her Hat
"	Ted Tetzlaff (Cameraman)	Ruth Chatterton (Lady of Secrets)
Warner Bros. Pictures	Elmer Dyer (Cameraman)	Lost Horizon

1936

Metro-Goldwyn-Mayer Corp.	Richard Boleslawski (Director)	Theodora Goes Wild
RKO Radio Pictures	Peverell Marley (Cameraman)	Women of Glamour
20th Century-Fox Film Corp.	Harry Sauber (Writer)	
Warner Bros. Pictures	Mary McCall (Writer)	Craig's Wife

1937

Metro-Goldwyn-Mayer Corp.	George Oppenheimer (Writer)	I'll Take Romance
"	Wilhelm Von Wymetal, Jr. (Stage Dir.)	"
RKO Radio Pictures	Joel Sayre (Writer)	
20th Century-Fox Film Corp.	Luciene Andriot (Cameraman)	I'll Take Romance

[fol. 3357]

1938

Company	Artist	Picture
RKO Radio Pictures, Inc.	Phil Epstein (Writer)	Detective Story
"	Anthony Veiller (Writer)	Murder in Massachusetts
Paramount	Ken Englund (Writer)	There's That Woman Again
20th Century-Fox	Sheridan Gibney (Writer)	Our Wife

1939

Loew's Inc.	Richard Rooson (Director)	Only Angels Have Wings
"	Jules Furthman (Writer)	" "
Paramount	Ken Englund (Writer)	His Girl Friday
"	Claude Binyon (Writer)	
"	Victor Young (Musical Director)	Golden Boy
RKO Pictures, Inc.	Nick Musuraca (Cameraman)	Golden Boy
20th Century-Fox	Karl Freund (Cameraman)	Golden Boy
Warner Bros.	Arthur Todd (Cameraman)	Incredible Mr. Williams
Paramount	Robert Carson (Writer)	Singapore

1940

Paramount	Frederick Hollander (Musical Composer)	Too Many Husbands
Warner Bros.	Sid Hickox (Cameraman)	The Doctor Takes a Wife
Warner Bros.	Arthur Todd (Cameraman)	Incredible Mr. Williams
Warner Bros.	Earl Badlwin (Writer)	He's My Uncle

1941

Paramount	LeRoy Prins (Dance Director)	Time Out for Rhythm
Paramount	Theodore Reed (Director)	Her First Beau
20th Century-Fox	Ethel Hill (Writer)	Angel Cake

[fol. 3358]

In the following instances, players were borrowed by Columbia from *independent* producers since 1933 for the pictures indicated:

1933

Company	Player	Picture
Reliance Pictures	Marjorie Rambeau	Man's Castle

1934

Hal Roach Studios	Scott Becket	Whom the Gods Destroy
"	Patsy Kelly	The Party's Over
20th Century Pictures	Arline Judge	The Party's Over
"	Paul Kelly	Blind Date
Universal Pictures	Roger Pryor	Orchids & Onions (Lady by Choice)

	1935	
Samuel Goldwyn	Billie Burke	Rich Man's Daughter (She Couldn't Take It)
"	"	Feather in Her Hat
"	David Niven	"
Reliance Productions	Gordon Jones	Devil's Squadron
Universal Pictures	Billy Burrud	Devil's Squadron
"	Henry Mollison	The Lone Wolf (Lone Wolf Returns)
"	Henry Armetta	Unknown Woman
Walter Wanger Productions	Peggy Conklin	One Way Ticket
	1936	
Larry Darmour	Jack Holt	Outlaws of Paloose (End of the Trail)
B. P. Schulberg Productions	Edward Arnold	Fer-de-Lance (Meet Nero Wolfe)
Samuel Goldwyn	Joel McCrea	Purple & Fine Linen (Adventure in Manhattan)
Universal Productions	Gerald Smith	When You're in Love
"	Dorothea Kent	Safari in Paradise (More Than a Secretary)
"	Billy Burrud	U. S. Smith (Pride of the Marines)

[fol. 3359]

	1937	
Company	Player	Picture
Universal Pictures Co.	Mischa Auer	It's All Yours
Walter Wanger Prods.	Madeleine Carroll	Thanks for Nothing (It's All Yours)
	1938	
Samuel Goldwyn, Inc., Ltd.	Jerome Cowan	There's Always a Woman
B. P. Schulberg Prod., Inc.	Edward Arnold	You Can't Take It With You
Selznick International Pict.	Margaret Tallichet	Romantic Age (Girls' School)
Universal Pictures Co.	Mischa Auer	You Can't Take It With You
Universal Pictures Co.	Nan Grey	Romantic Age (Girls' School)
Universal Pictures Co.	Samuel S. Hinds	You Can't Take It With You
	1939	
Samuel Goldwyn Inc. Ltd.	Thomas Mitchell	Only Angels Have Wings
B. P. Schulberg Prod. Inc.	Edward Arnold	Mr. Smith Goes to Washington
Pacific Prod. Inc.	Cliff Edwards	His Girl Friday
	1940	
Howard Hughes Prod.	Ruth Terry	Blondie Goes Latin
Selznick International Pictures Inc.	Allan Marshall	He Stayed for Breakfast
	1941	
Hal Roach Studios Inc.	John Hubbard	She Knew All The Answers
Universal Pictures Co. Inc.	Samuel S. Hinds	Senate Page Boys

[fol. 3369]

In the following instances, artists other than players were borrowed by Columbia from *independent* producers since 1933 for the pictures indicated:

Company	Artist	Picture
	1935	
B. P. Schulberg Productions	Leon Shamroy (Cameraman)	She Married Her Boss
	1936	
Pioneer Pictures, Inc.	James Van Trees (Cameraman)	They Met in a Taxi
		The Man Who Lived Twice
Selznick International	Max Steiner (Music Dir.)	Lost Horizon
United Artists Studio Corp.	Alfred Newman (Music Conductor)	When You're in Love
	1937	
Samuel Goldwyn Inc., Ltd.	Joe Bigelow (Writer)	Easy Sailing
United Artists Studio Corp.	Alfred Newman (Music Conductor)	Interlude (When You're in Love)
Universal Pictures Co.	Merritt Gerstad (Cameraman)	I Married An Artist
	Warrier Cruse (2nd Cameraman)	
	Michael Walsh (Ass't Cameraman)	
	1938	
Selznick International Pict.	George Cukor (Director)	Holiday
	1939	
Walter Wanger Prod. Inc.	Ken Englund (Writer)	Doctor Takes a Wife and This Thing Called Love
	1940	
Selznick International Pictures Inc.	Albert Simpson (Special Effects Cameraman)	Arizona

[fol. 3361] This borrowing and loaning is necessary to enable an independent producer, such as Columbia, to survive. It is necessary to have a certain collaboration between the star, the director, the story and the cameraman. The production of motion pictures is not an ordinary commercial business. Fundamentally the stringent requirements of an art must be met by producers in order to create works that please and entertain the public of the world. Producers must blend the component elements—the story, the artist, the director, the technician—and produce a work to which each element has made its important contribution, and which in the final result carries a universal appeal.

There always has been and still is the greatest competition between motion picture producers for stories, stars, directors and technicians.

In recent years, the motion picture companies have had to compete not only among themselves, but also with radio broadcasting stations, in securing talent. The salaries paid by the radio broadcasting industry have been so attractive to the artists, that the motion picture companies have had to increase the salaries paid by them. During 1937, the radio industry spent approximately $45,000,000 for artists. In fact, the motion picture companies, including Columbia, have been compelled to make their pictures more attractive because of the competition of radio. In many cases, the motion picture companies, including Columbia, have been compelled to negotiate with artists bureaus operated by owners of radio broadcasting stations in securing the services of artists in the production of motion pictures. In such negotiations, Columbia has always acted independently of any other motion picture producers. Columbia has always tried to obtain the best talent for its pictures within [fol. 3362] the limits of its means. The cost of story material has greatly increased over the years, and within recent years it is not uncommon for a producer to pay from $50,000 to $200,000 for a successful Broadway play for picture purposes. Columbia paid $200,000 for the picture rights to "You Can't Take It With You," which was recently released. Other companies have paid similar sums for literary properties.

In acquiring these properties each company is in keen competition with all the other companies, and the motion picture rights to such stories are acquired by the highest bidder. The market is open to anyone who chooses to pay

the price demanded, and the motion picture producers bid against each other for successful plays.

Successful novels command high prices for motion picture reproduction. Having acquired a successful work, such as a play or novel, the producers' problem does not end there. He is required to cast his picture with artists who can suitably portray the characters of the work. That is one of the most difficult problems in production. Columbia has but a limited number of artists on its payroll under contract to it. All other producing companies, including the defendant producers, likewise have a limited number of artists on their payroll. No producing company that ever existed could afford to carry on its payroll the vast number of artists from whose ranks could be drawn the particular stars to appear in the works which these producing companies acquire from time to time.

Columbia on the occasions that it has borrowed artists from other producing companies has been compelled to do so because it did not have in its employ the artists who were suitable for the particular production in mind.

[fol. 3363] In 1933, Columbia produced "It Happened One Night." The story was definitely suited to the talents of Clark Gable and Claudette Colbert, neither of whom was under contract with Columbia, which, however, had no artists in its employ suitable for the parts. It was compelled to go to Metro-Goldwyn-Mayer Company, the employer of Clark Gable, and arrange with that company for his services. Claudette Colbert was then under contract with Paramount, but that contract was about to expire. Columbia finally succeeded in obtaining her services by direct contract with her for a single picture. These two artists made a brilliant success in roles for which they were naturally suited.

For "Mr. Deeds Goes To Town," which was produced in 1936 by Columbia, this defendant borrowed from Paramount Pictures Corporation Gary Cooper, because it had no artist in its own employ who could even remotely fit the leading role of the picture.

The cases above cited are merely illustrative of the many situations that constantly exist.

The same applies with respect to directors. Certain story material can be handled by one director and not by another. Some directors are expert in comedies, some in romances, others in more serious pictures. Columbia cannot afford to

have in its employ a sufficient number of outstanding directors with enough versatility to direct every kind of story required by the corporation. Consequently, from time to time Columbia has been compelled to borrow capable directors from other companies in order to insure success.

Another element that very frequently motivates Columbia's engagement of a particular director is the fact that such director is best fitted to direct a particular star. A great many stars prefer to work for their own director who [fol. 3364] is capable of bringing out to the best advantage their talents and abilities, and when such stars are borrowed by Columbia Pictures Corporation it has frequently had to borrow the director to go with the star in order to have harmonious and economical production.

The same holds true with cameramen. These highly trained technicians occupy an important position in the industry, and many directors and stars will only work with a particular cameraman, because the latter has the requisite skill to produce the best lighting effects and to accentuate the best features of the star.

In no case has Columbia ever borrowed a star, director or technician from another producer unless it actually needed the services of such star, director or technician and had none in its own employ who could at the moment substitute for him. Columbia has always found it very difficult to borrow a star, director or technician; on occasions Columbia's requests were refused outright and on occasions it was compelled to pay a very substantial bonus to acquire the services of the individual. When it borrowed Katharine Hepburn from RKO Corporation for the picture "Holiday" it was compelled to pay a consideration of $50,000 over and above the amount that it was required to pay the artist under the contract between them. Columbia is not and never has been a party to any pool for the purpose of exchanging its directors, artists or technicians in the industry.

Columbia has never loaned any of its artists, directors or technicians to any other producer, except where there was an urgent demand on the part of such producer for the particular artist, director or technician.

[fol. 3365] In borrowing or loaning such artist, director or technician it is immaterial to Columbia whether the borrower or lender is a major producer or not. Columbia has never made any distinction between producers in this respect.

The number of artists borrowed by Columbia from the major producers is insignificant compared with the number of such artists which such producers have under contract. Upon information and belief, the major producers had under contract at the date of the commencement of this suit, the following number of actors and actresses (this does not include directors, producers, cameramen or other technicians):

Metro-Goldwyn-Mayer Corporation	95
Warner Bros.	60
Paramount	59
Twentieth-Century Fox	93
R.K.O. Radio	39
Total	346

During previous years, the major producers had under contract a similar number of actors.

At the commencement of this suit Columbia had under contract only six stars and eight feature players.

During 1937, Columbia borrowed from these companies in the aggregate only six players, and borrowed ten during 1938, eight in 1939, and four in 1940. In previous years, Columbia borrowed a larger number of actors from the major producers, but the number of instances in which Columbia has been able to borrow such actors from the major producers has declined in recent years.

There are many occasions when Columbia has attempted to borrow players from other producers but has been un- [fol. 3366] able to do so for the following reasons: In some instances, the player or the producer did not like the role for which the player was desired. In other instances, the player or the producer did not like other features of the proposed production, for example, the director, the script, the leading man or woman. In some cases, the proposed assignment conflicted with a similar part which the producer having the player under contract planned for such player in one of its own productions, in many cases, the player was not available at the time or for the period desired. Oftentimes the player was of such importance that a loan-out would not be considered except if in exchange it could borrow a player of equal importance or box-office value.

For the Grace Moore picture "I'll take Romance," Columbia tried to borrow James Stewart, Robert Taylor or Franchot Tone from Metro-Goldwyn-Mayer, but none of them was available. An effort was made to borrow Fred MacMurray from Paramount, but he was likewise unavailable.

For the Grace Moore picture, "When You're In Love," Columbia tried to borrow Fred MacMurray, James Stewart or Franchot Tone for the leading male part, but again was unable to do so. It finally succeeded in borrowing Cary Grant from Paramount but only upon committing itself to lend to Paramount one of its stars, Jean Arthur.

For its picture "More Than A Secretary," Columbia tried to borrow a leading man from virtually every one of the producers, and with great difficulty finally succeeded in getting George Brent from Warner Bros., upon giving them a commitment to loan Jean Arthur to them.

For its picture, "Holiday," Columbia unsuccessfully tried to borrow Barbara Stanwyck from the R.K.O. Radio and 20th Century-Fox.

[fol. 3367] In order to borrow Joel McCrea from Samuel Goldwyn, Inc., Columbia was compelled to agree to lend to Goldwyn three of its contract players.

For its pictures "It's All Yours" and "There's Always A Woman," Columbia attempted to borrow Loretta Young of 20th Century-Fox. In one case, she was not available; in the other, she refused the assignment because she did not like the leading man or director.

Columbia tried to borrow Alice Faye from 20th Century-Fox for a proposed picture entitled "Grand Gesture." She was not available, and Columbia has been unable to engage or borrow a suitable star for this picture, and it has been obliged to defer the production of this picture.

For its picture "It's All Yours," Columbia endeavored to borrow Don Ameche or Tyrone Power from 20th Century-Fox without success. For the same picture it attempted to borrow Franchot Tone or Robert Young from Metro-Mayer and also Ray Milland from Paramount, all without success.

On a number of occasions Columbia has tried to borrow Frances Dee from Paramount, but she has never been available.

Columbia has tried unsuccessfully to borrow the following artists for the following pictures:

For "Frankie":

George Raft—from Paramount
Robert Young—from Metro-Goldwyn-Mayer
Franchot Tone—from Metro-Goldwyn-Mayer

For "There's That Woman Again":

Maureen O'Sullivan—from Metro-Goldwyn-Mayer
Margaret Sullavan—from Metro-Goldwyn-Mayer
Joan Blondell—from Warner Bros.

[fol. 3368] For "Start Cheering":

Allan Jones or Robert Young—from Metro-Goldwyn-Mayer
Dick Powell—from Warner Bros.
Jack Haley or Tony Martin—from 20th Century-Fox

For "Golden Boy":

Tyrone Power—from 20th Century-Fox
John Garfield—from Warner Bros.

For "Blondie":

Nan Grey—from Universal

For "Mr. Smith Goes to Washington":

Lionel Barrymore—from Metro-Goldwyn-Mayer
Frank Morgan—from Metro-Goldwyn-Mayer
Lewis Stone—from Metro-Goldwyn-Mayer
Gary Cooper—from Samuel Goldwyn, Inc.

On many occasions, Columbia attempted to borrow Robert Montgomery from Metro-Goldwyn-Mayer, but without success.

The attempted borrowing of directors and writers by Columbia has been attended with the same difficulties.

In the following additional instances Columbia attempted to borrow artists from other producers, and was for one reason or another unsuccessful:

For "The Lady Objects":

Maureen O'Sullivan—from Metro-Goldwyn-Mayer
Margaret Lindsay—from Warner Brothers

Gail Patrick—from Paramount
Frances Farmer—from Paramount

[fol. 3369] For "Girls' School":

Helen Parrish—from Universal
Marjorie Weaver—from 20th Century-Fox
Arleen Whelan—from 20th Century-Fox
Gail Patrick—from Paramount
Andrea Leeds—from Samuel Goldwyn

For "You Can't Take It With You":

Gregory Ratoff—from 20th Century-Fox
Akim Tamiroff—from Paramount
Olivia de Haviland—from Warner Brothers
Frances Dee—from Paramount

For "I Am The Law":

John Barrymore—from Paramount

For "There's Always A Woman":

Lloyd Nolan—from Paramount

For "Holiday":

Robert Benchley—from Metro-Goldwyn-Mayer
Virginia Bruce—from Metro-Goldwyn-Mayer

For "It's All Yours":

Robert Montgomery—from Metro-Goldyn-Mayer

For "Broadway Bill":

Guy Kibbee—from Warner Brothers

For "Her First Beau":

Judy Garland—from Metro-Goldwyn-Mayer—refused
Betty Field—from Paramount—unavailable

[fol. 3370] For "They Dare Not Love":

Robert Young—from Metro-Goldwyn-Mayer—unavailable

For "The Lady In Question":

Hedy LaMarr—from Metro-Goldwyn-Mayer—refused
Frank Morgan—from Metro-Goldwyn-Mayer—unavailable
Wallace Beery—from Metro-Goldwyn-Mayer—refused
Paulette Goddard, from Paramount—unavailable

For "Bedtime Story":

Rosalind Russell—from Metro-Goldwyn-Mayer—artist refused to play part
Fred MacMurray—from Paramount—refused

For "Singapore":

Dorothy Lamour—from Paramount—unavailable

For "First Woman Doctor":

Betty Davis—from Warner Brothers—refused

For "A Doctor's Husband":

Madeleine Carrol—from Paramount—refused

For "Under Age":

Brenda Joyce—from 20th Century-Fox—unavailable for this picture.
Ronald Regan—from 20th Century-Fox—unavailable for this picture

[fol. 3371] For "The Big Boss":

Dean Jagger—from 20th Century-Fox—unavailable for this picture.

For "Betty Co-Ed":

Regis Toomey—from Warner Brothers—unavailable

While Columbia has been willing to cooperate with other producers in loaning to them its players, directors and writers, it has on several occasions been unable to grant the request of such other producers.

Universal desired to borrow Jean Arthur from Columbia for "Letter of Introduction." She was unavailable at the time, as there was some legal difficulty with her which pre-

vented Columbia from using her services or lending her to any one else.

20th Century-Fox desired to borrow Ralph Bellamy for a picture from Columbia, but upon reading the script Bellamy declined to play the part.

Metro-Goldwyn wanted to borrow Ralph Bellamy for "They Gave Him A Gun." Columbia did not like the part and declined to make the loan-out.

Selznick-International desired to borrow Dolly Haas for "The Last Gangster," but since they insisted upon obtaining options for additional pictures with Miss Haas, Columbia refused to loan the artist, and the parties were unable to consummate a deal.

Paramount desired to borrow Rita Hayworth for "Hold Back The Dawn" and R.K.O. desired to borrow Glenn Ford. Columbia declined to make these loan-outs.

[fol. 3372] Columbia has only a limited number of stars, featured players, stock players, directors, technicians and others who have gained fame, prestige, renown, artistic, technical or other great value in the industry and particularly in the production branch thereof.

The following is a complete list of the stars, feature players, stock players, and other employees under contract with Columbia for the production of its pictures at the time of the commencement of this action.

Stars [6]

Jean Arthur	Irene Dunne
Charley Chase	Cary Grant
Marlene Dietrich	Edw. G. Robinson

Featured Players [8]

Ralph Bellamy	Edith Fellows
Andy Clyde	Charles Starrett
Walter Connolly	Three Stooges
Melvyn Douglas	Sons of the Pioneers

Stock Players [19]

Beatrice Blinn	Dick Curtis
Gloria Blondell	Ann Doran
Stanley Brown	Gordon Elliott
Beatrice Curtis	Richard Fiske

Rita Hayworth
Lola Jensen
Eddie Laughton
Marc Lawrence
Iris Meredith
Robert Paige
Joan Perry
John Tyrrell
Francis Walker
Jacqueline Wells
Jay Wilsey

[fol. 3373]

Directors [9]

John Brahm
Frank Capra
Charles C. Coleman, Jr.
Alexander Hall
D. Ross Lederman
Del Lord
Rouben Mamoulian
Sam Nelson
Frank Strayer

Producers [11]

Irving Briskin
Charles Chase
Fred Kohlmar
Wallace MacDonald
Hugh McCollum
William Perlberg
Everett Riskin
E. Lloyd Sheldon
Joseph Sistrom
Robert Sparks
Jules White

Writers [17]

Sidney Buchman
Al Duffy
Paul Jarrico
Gladys Lehman
Fred Niblo, Jr.
Michael L. Simmons
Jonathan Latimer
Robert E. Kent
Arthur Horman
James Edw. Grant
Richard Flournoy
Charles Condon
Bennett Cohen
Harold Buchman &
Maurice Rapf
Walter Wise
Charles Francis Royal

Technicians [23]

Cameraman
"
"
"
"
"
"
"
Lucien Ballard
Henry Freulich
Irving Lippman
Franz Planer
Adolph Schafer
Allen Siegler
Robert Tobey
Joseph Walker

[fol. 3374]

Art Director	Lionel Banks
Asst. Director	Arthur Black
" "	Clifford Broughton
Construction Superintendent	Samuel Harwick
Hairdresser	Helen Hunt
Medical Director	Dr. Immerman
Set Dresser	Mrs. Babs Johnstone
Fashion Designer	Robert Kalloch
Sound Engineer	John Livadary
Casting Director	W. D. Mayo
Music Composer	Ben Oakland
Gaffer	Homer Plannette
"	James Punter
Musical Director	Morris Stoloff
Title Artist	Edward Withers

All these individuals had been placed under contract by Columbia independently of any other motion picture companies and in actual competition with such other companies for their services.

Many of the employees of Columbia have been under contract to it for many years, and there has been no radical increase in the number of contract employes within recent years. Such increases as have been made, have been entirely commensurate with the growth of the business of Columbia. In engaging its personnel, Columbia has acted independently of and not in concert with any of the other defendants, directly or indirectly.

The stars, featured players and other artists and employees of Columbia were not all employed under exclusive contracts. Many of them insisted upon and retained the right to make pictures for other producers of their own choosing during the same period of time that they were under contract to make pictures for Columbia. Among [fol. 3375] such artists and employees have been Irene Dunne, Cary Grant and Edward G. Robinson.

The tendency on the part of artists, technicians and other employees to refuse to agree to devote their time exclusively to Columbia during the periods of their respective contracts, has made it necessary for Columbia to engage a greater number of such employees than it had in the past.

The following artists had the privilege of making pictures for other companies while under contract to Columbia. These artists were employed by the independent producers listed during the term of their contract with Columbia.

Artist	*Year*	*Producer*
Mary Astor	1936-37	Selznick International
Andy Clyde	1937	Harry Sherman Productions, Universal
George Bancroft	1936	B. P. Schulberg Productions
Fay Wray	1933-34	Twentieth Century, Universal
Brian Aherne	1940	General Film Co.
Jean Arthur	1940	Frank Ross-Norman Krasna, Inc.
Joan Bennett	1940	Edward Small
Virginia Bruce	1940	Universal Pictures, Inc.
Andy Clyde	1940	Roland Reed Productions Este Productions
Rochelle Hudson	1939	Republic Pictures
Boris Karloff	1940	Universal Pictures, Inc. Monogram Pictures
Pete Lorre	1940	Republic Pictures
Dub Taylor	1940	Republic Pictures
Loretta Young	1941	Frank Lloyd Productions

[fol. 3376] Columbia has always acted as an independent producer in engaging its personnel and in so doing has acted in competition with the producers, including the other defendants herein, as well as other independent producers who are not defendants herein. For example, since 1933 the following players, directors, writers and technicians have been employed both by Columbia and independent producers, not parties to this suit:

Players

Ralph Bellamy	Joan Bennett
Leo Carrillo	Gregory Ratoff
Melvyn Douglas	Gail Patrick
Mary Astor	Lionel Atwill
Victor MacLaglen	Binnie Barnes
Tullio Carminati	Chester Morris

Players (Continued)

Constance Cummings
Margo
Irene Hervey
Wendy Barrie
Henry Stephenson
Edith Fellows
Berton Churchill
Nana Bryant
Sheila Bromley
Charles Starrett
Arline Judge
Conrad Nagel
Robert Barrat
Henry C. Gordon
Herman Bing
Robert Strange
Warren William
John Galludet
Jessie Ralph
Lillian Bond

Nancy Carroll
Lorna Gray
Joseph Schildkraut
Victor Kilian
Katherine Doucet
Tala Birell
Penny Singleton
Herbert Marshall
Douglas Montgomery
Cary Grant
Alma Kruger
Mary Brian
Basil Rathbone
Lloyd Nolan
Geneva Mitchell
Louise Stanley
Dolores Del Rio
June Collyer
Dorothy Burgess
Judith Allen

[fol. 3377]

Inez Courtney
Sally O'Neil
Ann Doran
Marc Lawrence
Jimmy Durante
Aline MacMahon
Stuart Erwin
Henry Kolker
Peter Lorre
Lew Ayres
Jackie Moran
Donald Meek
Robert Middlemass
Harry Langdon
Arthur Hohl
Claude Gillingwater
Joyce Compton
Irving Pichel
Jacqueline Wells
Charles Buddy Rogers

Ruth Donnelly
Evelyn Knapp
Paul Kelly
George Bancroft
Charles Farrell
Victor Jory
Otto Kruger
Marian Shilling
James Blakeley
Dick Curtis
Donald Cook
Robert Armstrong
Arthur Loft
Jimmy Butler
Evelyn Venable
Marjorie Gateson
Andy Clyde
John Buckler
Polly Moran
Roger Pryor

Players (Continued)

Dorothy Tree	Peggy Stratford
Edward Everett Horton	Michael Bartlett
Eddie Nugent	Patsy O'Conner
Rochelle Hudson	Martha Tibbetts
Barbara Weeks	Robert Fiske
Eddie Fetherstone	Henry Mollison
Raymond Walburn	Rosalind Keith
David Carlyle	Arthur Lake
(Robert Paige)	James Dunn
Marion Weldon	Neil Hamilton
Ian Keith	Lyle Talbot
Ralph Remley	Walter Connolly
Mary Russell	Fay Wray
Wallace Ford	Boris Karloff
William Gargan	Helen Vinson
H. B. Warner	Robert Allen
Alexander D'Arcy	Marian Marsh
Shirley Grey	Jean Dixon
Reginald Denny	Richard Cromwell

[fol. 3378] Players (Continued)

Bud Jamison	Joseph Calleia
Gloria Shea	Mary Carlisle
Joan Perry	Melville Cooper
Charles Sabin	Frances Dee
Dorothy Wilson	Ruth Donnelly
Fred Keating	Johnny Downs
Sally Eilers	Nan Grey
Paul Hurst	Rochelle Hudson
Rita Hayworth	Warren Hull
Lionel Stander	Frieda Inescort
Patricia Farr	Isabel Jewell
Henrietta Crosman	Boris Karloff
Sally Blane	Otto Kruger
Karen Morley	Doris Weston
Walter Abel	Loretta Young
Jean Arthur	Constance Bennett
Joan Bennett	Bruce Cabot
Alan Baxter	Thurston Hall
Charles Bickford	Ann Sothern
Eric Blore	Norman Foster
Bruce Cabot	Randolph Scott

Players (Continued)

Elissa Landi	Joan Blondell
Helen Mack	Beulah Bondi
Thomas Mitchell	Edward Brophy
Marguerite Churchill	Harry Carey
Richard Arlen	Lee J. Cobb
Dolly Haas	Dolores Costello
Jean Parker	Harry Davenport
Charles Bickford	Brian Donlevy
Edward Arnold	Ann Dvorak
Clarence Kolb	Penny Singleton
Lola Lane	Randolph Scott
Gene Lockhart	Onslow Stevens
Paul Lukas	Luana Walters
Helen Mack	Michael Whalen
Ralph Morgan	Ann Dvorak
Richard Arlen	Preston Foster
Edward Arnold	Douglas Fairbanks, Jr.

[fol. 3379]

Frances Robinson	Barbara Stanwyck
Chester Morris	June Storey
Una O'Connor	Jackie Searle
Pat O'Brien	Virginia Weidler
Jean Parker	Henry Wilcoxson
Eugene Pallette	Fay Wray
Roger Pryor	Warren William
Beverly Roberts	Brian Aherne
Evelyn Keyes	Montague Love
Linda Winters	Ida Lupino
Brian Donlevy	Marian Marsh
John Halliday	Thomas Mitchell
Josephine Hutchinson	Barton McLane
Porter Hall	Adolphe Menjou
Victor Jory	Martha O'Driscoll
Bobby Jordan	Maureen O'Sullivan
Tommy Kelly	Gail Patrick
Paul Kelly	Claude Rains
June Lang	Irene Rich
Anita Louise	

Directors

Leon Barsha
Ford Beebe
David Burton
Eddie Buzzell
Irving Cummings
Tay Garnett
Marion Gering
Alfred E. Green
Lambert Hillyer
James W. Horne
Alan James
Erle C. Kenton
Gregory La Cava
Harry Lachman
D. Ross Lederman
Edward Ludwig
Rouben Mamoulian
Hamilton MacFadden
Roy William Neill
Arthur Ripley
Aubrey Scotto
William A. Seiter
David Selman
Victor Schertzinger
Frank Strayer
Ray Taylor
Charles Vidor
Gordon Wiles
Mack V. Wright

[fol. 3380]

C. C. Coleman, Jr.
Nick Grinde
Lewis D. Collins
Edward Sedgewick
Jos. H. Lewis
George Stevens
Sam White
Richard Wallace
Ben Stoloff
Frank McDonald
Ray Taylor
Howard Hawkes
Sidney Salkow
James Whale
Erle C. Kenton
Lambert Hillyer
Christy Cabanne
Edward Ludwig

Writers

Frank R. Adams
Doris Anderson
Robert D. Andrews
Joseph Anthony
Stephen Morehouse Avery
John Balderston
Barry Barringer
Ford Beebe
Charles Belden
Arnold Belgard
Thomas Bell
Charles Bennett
Michael Blankfort
David Boehm
Houston Branch
Laurie Brazee
Gilson Brown
Adele Buffington
James M. Cain
J. Benton Cheney
Jerome Chodorov
Bennett Cohen
Earl Felton
Ron Ferguson
Joseph Fields
Richard Flournoy

Writers (Continued)

Garrett Fort
Owen Francis
Paul Franklin
Lea Freeman
Samuel Fuller
Harvey Gates
Maurice Geraghty
Alex Gottlieb
James Gow
Joe Graham
Bert Granet
James Gruen
Maurice Hanline
Ann Harolde
Ray Harris
Ethel Hill
Arthur T. Horman
Lionel Houser

[fol. 3381]

Anthony Coldeway
Lester Cole
Adele Commandini
Charles R. Condon
Delmar Daves
Albert De Mond
Jacques Deval
Basil Dickey
Edgar Edwards
Saul Elkins
Guy Endore
Richard English
Francis E. Faragoh
Joseph Krumgold
John Francis Larkin
John Howard Lawson
Gladys Lehman
William Lipman
Sherman Lowe
Mary C. McCall, Jr.
Mary E. McCarthy
Bernard McConville
Horace McCoy
John McDermott
Dorrel & Stuart McGowan
Joseph Moncure March
Al Martin
Seton I. Miller
Jefferson Moffitt
Jane Murfin
Jack Natteford
Grace Neville
Jack Neville
Norman Houston
Harry O. Hoyt
Harrison Jacobs
Paul Jarrico
J. Griffin Jay
Henry Johnson
Robert L. Johnson
Edmund Joseph
Aben Kandel
Jack Kirkland
Arthur Kober
Fred Kohner
H. S. Kraft
Charles Francis Royal
Harry Sauber
George Sayre
Dore Schary
Ray Schrock
Doris Schroeder
Ewing Scott
Mannie Seff
Maxwell Shane
Richard Sherman
Harold Shumate
David Silverstein
Vernon Smith
Earl Snell
Lynn Starling

Writers (Continued)

Donald Ogden Stewart
Arthur Strawn
Wallace Sullivan
Leslie Swabacker
Jo Swerling
Henry Taylor

[fol. 3382]

George Oppenheimer
B. Harrison Orkow
E. E. Paramore
Edwin C. Parsons
Paul Perez
George Plympton
Joseph Poland
Gertrude Purcell
Milton Raison
John B. Rathmell
Wells Root
Charles Bennett
Houston Branch
Sy Bartlett
Miles Connolly
Arthur Caesar
Carlton Sand
Basil Dickey
Wellyn Totman
Barry Trivers
Wanda Tuchok
Wm. Ullman, Jr.
Dale Van Every
George Waggner
M. Coates Webster
Nathaniel West
Aileen Wetstein
F. McGrew Willis
Robert D. Andrews
Charles Condon
Oliver Drake
Peter Dixon
Paul Franklin
Guy Endore
Frank Fenton
Fred Schlick
Edward Eliscu
Earl Felton
Jane Hinton Smith
Everett Freeman
Sheridan Gibney
Bert Granet
Alex Gottlieb
Fred Guiol
Lambert Hillyer
Edmund L. Hartmann
Gordon Kahn
Jack Lait, Jr.
Edmund Kelso
Fred Myton
Peter Milne
Francis Martin
Karl Brown
Arnold Belgard
Bernard Feins
Harry Fraser
Harvey Gates
Wyndham Gittens
Milton Gropper
Michael Hogan
Joseph Hoffman
Frances Hyland
Joseph Krumgold
Aben Kandel
Robert Lively
John Larkin
Sarah Mason
Martin Mooney
N. Brewster Morse
Robert Neville
Stuart Palmer
Marion Orth

[fol. 3383] Writers (Continued)

Charles Arthur Powell	Charles M. Brown
Harry Segall	Gene Edward Tuttle
Gladys Lehman	Irngard Von Cube
Walter Wise	A. Dorian Otvos
Milton Lazarus	Rex Taylor
Bogart Rogers	Michael Blankfort
Gilson Brown	Bennett Cohen
Morgan B. Cox	Tom Gibson
Colin Clements	Rowland Leigh
David Lamson	Lowell Brodaux
Scott Littleton	Jay Dratler
James Creelman	John Rathmell
Irwin Shaw	Stanley Roberts
Ted Reeves	Gordon Rigby
Allen Rivkin	Lynn Root
Sidney Salkow	Don Ryan
Harold Schumate	David Silverstein
Jerry Sacheim	Arthur Strawn
Kurt Siodmak	Michael Simmons
Daniel Taradash	Dwight Taylor
Horace McCoy	Robertson White
John Neville	William Watson
Joseph O'Donnell	Luci Ward
Roy Chanslor	Leslie T. White

Cameramen

Lucien Andriot	Bert Longendecker
James S. Brown, Jr.	Peverell Marley
William Beckway	Virgil Miller
John W. Boyle	Leon Shamroy
Harry Forbes	William Thompson
Merritt Gerstad	Joseph A. Valentine
Herbert Kirkpatrick	Gilbert Warrenton
John Stumar	George Meehan
Karl Freund	Lee Garms

[fol. 3384] No two directors or players have the same value. There is a distinction between stars, featured players, and stock players. Moreover, during the years since 1933, 245 players were each engaged by Columbia for only one picture. The answering defendants are without knowl-

edge as to the arrangements between the other defendant producers and their respective contract players.

The following is a list of players engaged by Columbia for only one picture:

Player	*Year*	*Picture*
Evelyn Knapp	1933	Speed Wings
Sue Carol	1933	Twentieth Century
John Barrymore	1933	Straightaway
Claudette Colbert	1933	It Happened One Night
Helen Vinson	1934	Captain Hates the Sea
Leon Errol	1934	Captain Hates the Sea
Victor McLaglen	1934	Captain Hates the Sea
John Gilbert	1934	Captain Hates the Sea
Boris Karloff	1934	Black Room, The
Lilian Harvey	1934	Let's Live Tonight
Tullio Carminati	1934	Let's Live Tonight
Sally Eilers	1934	Carnival
Lee Tracy	1934	Carnival
Edward G. Robinson	1934	Whole Town's Talking
Warner Baxton	1934	Broadway Bill
Gary Cooper	1935	Mr. Deeds Goes to Town
Edward Arnold	1935	Crime and Punishment
Joan Bennett	1935	She Couldn't Take It
George Raft	1935	She Couldn't Take It
Ronald Colman	1935	Lost Horizon
James Dunn	1936	Come Closer, Folks
John Boles	1936	Craig's Wife
John Boles	1937	She Married an Artist
Ralph Bellamy	1933	One Is Guilty
Shirley Gray	1933	One Is Guilty

[fol. 3385]

Ralph Bellamy	1933	Before Midnight
Claude Gillingwater	1933	Before Midnight
June Collyer	1933	Before Midnight
Evelyn Knapp	1933	Police Car 17
Ralp Bellamy	1933	Once to Every Woman
Gregory Ratoff	1933	Let's Fall in Love
Mary Brian	1933	Shadows of Sing Sing
Mary Brian	1933	Fog
Reginald Denny	1933	Fog
Robert Armstrong	1933	Above the Clouds

Player	*Year*	*Picture*
Dorothy Wilson	1933	Above the Clouds
Loretta Young	1933	A Man's Castle
Ralph Bellamy	1934	By Persons Unknown
Shirley Gray	1934	By Persons Unknown
Gail Patrick	1934	Crime of Helen Stanley
Shirley Gray	1934	Crime of Helen Stanley
Ralph Bellamy	1934	Crime of Helen Stanley
Shirley Gray	1934	Beyond the Law
Lillian Bond	1934	Hell Bent for Love
Evelyn Knapp	1934	Man's Game
Henrietta Crosman	1934	Among the Missing
Winnie Lightner	1934	I'll Fix It
Neil Hamilton	1934	Fugitive Lady
Arline Judge	1934	Name the Woman
Rita La Roy	1934	Name the Woman
Jean Arthur	1934	Defense Rests
Neil Hamilton	1934	Blind Date
Dorothy Burgess	1934	Black Moon
Robert Armstrong	1934	Hell-Cat, The
Doris Kenyon	1934	Whom the Gods Destroy
Jean Arthur	1934	Whirlpool
Jacqueline Wells	1934	Square Shooter
Marion Shilling	1934	Westerner, The
Wallace Ford	1934	In Spite of Danger
Bruce Cabot	1934	Men of the Night
Judith Allen	1934	Men of the Night

[fol. 3386]

Sally Blane	1934	Against the Law
Conrad Nagel	1934	Death Flies East
Tullio Carminati	1935	One Night of Love
Wallace Ford	1935	Men of the Hour
Norman Foster	1935	Superspeed
Harry Langdon	1935	Atlantic Adventure
George Bancroft	1935	Mr. Deeds Goes to Town
Melvyn Douglas	1935	She Married Her Boss
Pauline Lord	1935	Feather in Her Hat
Basil Rathbone	1935	Feather in Her Hat
Jimmy Butler	1935	Awakening of Jim Burke
Ralph Remley	1935	Awakening of Jim Burke
Ralph Bellamy	1935	Air Hawks
Michael Bartlett	1935	Love Me Forever

Player	*Year*	*Picture*
Ralph Bellamy	1935	Eight Bells
Roger Pryor	1935	Girl Friend
Ralph Bellamy	1935	Dangerous Intrigue
Sally O'Neil	1935	Too Tough to Kill
Roger Pryor	1935	Case of the Missing Man
Charles Bickford	1935	Pride of the Marines
Ian Keith	1935	Don't Gamble With Love
Irvin Pichel	1935	Don't Gamble With Love
Karen Morley	1935	Devil's Squadron
Lionel Atwill	1935	Lady of Secrets
Otto Kruger	1935	Lady of Secrets
Berton Churchill	1935	You May Be Next
Norman Foster	1935	Escape From Devil's Island
Mary Brian	1936	Killer at Large
Russell Hardie	1936	Killer at Large
William Gargan	1936	Alibi for Murder
Lina Basquette	1936	Final Hour
Marc Lawrence	1936	Final Hour
Marguerite Churchill	1936	Final Hour
June Clayworth	1936	Two Fisted Gentleman
James Dunn	1936	Two Fisted Gentleman
[fol. 3387]		
Drue Leyton	1936	Blackmailer
Paul Hurst	1936	Blackmailer
H. B. Warner	1936	Blackmailer
William Gargan	1936	Blackmailer
Robert Strange	1936	Trapped by Television
Joyce Compton	1936	Trapped by Television
Lyle Talbot	1936	Trapped by Television
Jackie Moran	1936	And So They Were Married
Mary Astor	1936	And So They Were Married
Melvyn Douglas	1936	And So They Were Married
Marion Weldon	1936	Dodge City Trail
Iris Shunn	1936	Cowboy Star
Paul Kelly	1936	Parole Racket
Aline McMahon	1936	When You're in Love
Henry Stephenson	1936	When You're in Love
Catherine Doucet	1936	When You're in Love
Margo	1936	Lost Horizon
Edw. Everett Horton	1936	Lost Horizon
Jane Wyatt	1936	Lost Horizon

Player	*Year*	*Picture*
Wynne Gibson	1936	Racketeers in Exile
Evelyn Venable	1936	Racketeers in Exile
Helen Mack	1936	I Promise to Pay
Reginald Denny	1936	More Than a Secretary
Ruth Donnelly	1936	More Than a Secretary
Wynne Gibson	1936	Come Closer, Folks
Dorothy Wilson	1936	Craig's Wife
Alma Kruger	1936	Craig's Wife
Paul Kelly	1937	Frameup, The
Dorothy Wilson	1937	Speed to Spare
Eddie Nugent	1937	Speed to Spare
Robert Armstrong	1937	It Can't Last Forever
Eduardo Ciannelli	1937	League of Frighfened Men
Irene Hervey	1937	League of Frightened Men

[fol. 3388]

James Dunn	1937	Venus Makes Trouble
Alexander D'Arcy	1937	Awful Truth
Stuart Erwin	1937	I'll Take Romance
Robert Barrat	1937	Penitentiary
Marjorie Gateson	1937	No Time to Marry
Leo Carrillo	1937	Little Miss Roughneck
Johnny Green	1937	Start Cheering
Hal Le Roy	1937	Start Cheering
Jimmy Durante	1937	Start Cheering
Gertrude Niesen	1937	Start Cheering
Broderick Crawford	1937	Start Cheering
Douglas Montgomery	1937	Life Begins With Love
Otto Kruger	1937	Counsel for Crime
Douglas Montgomery	1937	Counsel for Crime
Lorna Gray	1938	Adventure in Sahara
C. Henry Gordon	1938	Adventure in Sahara
Paul Kelly	1938	Adventure in Sahara
Paul Kelly	1938	Juvenile Court
Bruce Cabot	1938	Homicide Bureau
Charles Farrell	1938	Flight to Fame
Wendy Barrie	1938	I am the Law
Otto Kruger	1938	I am the Law
Barbara O'Neil	1938	I am the Law
Leo Carrillo	1938	City Streets
Henry Daniell	1938	Holiday
Jean Dixon	1938	Holiday

Player	*Year*	*Picture*
Binnie Barnes	1938	Holiday
Henry Kolker	1938	Holiday
Edw. Everett Horton	1938	Holiday
Lew Ayres	1938	Holiday
H. B. Warner	1938	You Can't Take It With You
Donald Meek	1938	You Can't Take It With You
Spring Byington	1938	You Can't Take It With You

[fol. 3389]

Fay Wray	1938	Smashing The Spy Ring
Ida Lupino	1938	Lone Wolf Spy Hunt, The
Ralph Morgan	1938	Lone Wolf Spy Hunt, The
Tom Dugan	1938	Lone Wolf Spy Hunt, The
Maureen O'Sullivan	1938	Let Us Live
Betty Furness	1938	North Shanghai
Alan Baxter	1938	My Son Is a Criminal
Walter Abel	1938	First Offenders
Beverly Roberts	1938	First Offenders
Robert Paige	1938	Flying G-Men
Richard Barthelmess	1938	Only Angels Have Wings
Thomas Mitchell	1938	Only Angels Have Wings
Allyn Joslyn	1938	Only Angels Have Wings
Charles Bickford	1938	Romance of the Redwoods
Jean Parker	1938	Romance of the Redwoods
Dorothy Moore	1938	Blondie Meets The Boss
Jonathan Hale	1938	Blondie Meets The Boss
Joel Dean	1938	Blondie Meets The Boss
Inez Courtney	1938	Blondie Meets The Boss
Fay Bainter	1939	Lady and the Mob, The
Ida Lupino	1939	Lady and the Mob, The
Lee Bowman	1939	Lady and the Mob, The
Henry Armetta	1939	Lady and the Mob, The
Frances Dee	1939	Coast Guard
Barbara Stanwyck	1939	Golden Boy
Adolphe Menjou	1939	Golden Boy
Lee J. Cobb	1939	Golden Boy
Joseph Calleia	1939	Golden Boy
Chester Morris	1939	Blind Alley
Ann Dvorak	1939	Blind Alley

Player	*Year*	*Picture*
Melville Cooper	1939	Blind Alley
Alan Curtis	1939	Good Girls Go to Paris

[fol. 3390]

Michael Whalen	1939	Outside These Walls
Dolores Costello	1939	Outside These Walls
Richard Arlen	1939	Missing Daughters
Marian Marsh	1939	Missing Daughters
Isabel Jewell	1939	Missing Daughters
Jean Parker	1939	Parents On Trial
Johnny Downs	1939	Parents On Trial
Frieda Inescourt	1939	Woman is the Judge, A
Otto Kruger	1939	Woman is the Judge, A
Brian Donlevy	1939	Behind Prison Gates
Fred Stone	1939	Konga, The Wild Stallion
Warren Hull	1939	Mandrake, The Magician
Doris Weston	1939	Mandrake, The Magician
Claude Rains	1939	Mr. Smith Goes to Washington
Edward Arnold	1939	Mr. Smith Goes to Washington
Thomas Mitchell	1939	Mr. Smith Goes to Washington
Eugene Pallette	1939	Mr. Smith Goes to Washington
Beulah Bondi	1939	Mr. Smith Goes to Washington
H. B. Warner	1939	Mr. Smith Goes to Washington
Harry Carey	1939	Mr. Smith Goes to Washington
Astrid Allwyn	1939	Mr. Smith Goes to Washington
Onslow Stevens	1939	Those High Grey Walls
Gene Lockhart	1939	His Girl Friday
Porter Hall	1939	His Girl Friday
Helen Mack	1939	His Girl Friday
Mary Carlisle	1939	Beware of Spooks!

[fol. 3391]

Player	*Year*	*Picture*
Jonathan Hale	1939	Blondie Brings Up Baby
Otto Kruger	1939	Scandal Sheet
Clarence Kolb	1939	Amazing Mr. Williams, The
Ruth Donnelly	1939	Amazing Mr. Williams, The
Edward S. Brophy	1939	Amazing Mr. Williams, The
Preston Foster	1939	Cafe Hostess
Ann Dvorak	1939	Cafe Hostess
Bruce Cabot	1939	My Son Is Guilty
Harry Carey	1939	My Son Is Guilty
Eric Blore	1939	Lone Wolf Strikes, The
Montague Love	1939	Lone Wolf Strikes, The
Alan Baxter	1939	Lone Wolf Strikes, The
Robert Wilcox	1939	Lone Wolf Strikes, The
Astrid Allwyn	1939	Lone Wolf Strikes, The
Frieda Inescourt	1939	Convicted Woman
June Lang	1939	Convicted Woman
Lola Lane	1939	Convicted Woman
Harry Davenport	1939	Too Many Husbands
Dorothy Peterson	1939	Too Many Husbands
Melville Cooper	1939	Too Many Husbands
John Qualen	1939	Too Many Husbands
Tom Kelly	1940	Military Academy
David Holt	1940	Military Academy
Bobby Jordan	1940	Military Academy
Jackie Searl	1940	Military Academy
Barton MacLane	1940	Men Without Souls
Reginald Gardner	1940	Doctor Takes A Wife, The
Gail Patrick	1940	Doctor Takes A Wife, The
Edmund Gwenn	1940	Doctor Takes A Wife, The

[fol. 3392]

Robert Wilcox	1940	Island of Doomed Men
Jean Muir	1940	Lone Wolf Meets a Lady, The
Eric Blore	1940	Lone Wolf Meets a Lady, The

Player	*Year*	*Picture*
Victor Jory	1940	Lone Wolf Meets a Lady, The
Roger Pryor	1940	Lone Wolf Meets a Lady, The
Miles Mander	1940	Babies For Sale
Jonathan Hale	1940	Blondie Has Servant Trouble
Ann Dvorak	1940	Girls of the Road
Helen Mack	1940	Girls of the Road
Lola Lane	1940	Girls of the Road
Brian Aherne	1940	Lady in Question, The
Irene Rich	1940	Lady in Question, The
Eugene Pallette	1940	He Stayed For Breakfast
Una O'Connor	1940	He Stayed For Breakfast
Douglas Fairbanks, Jr.	1940	Angels Over Broadway
Thomas Mitchell	1940	Angels Over Broadway
Barton MacLane	1940	Secret Seven, The
Anita Louise	1940	Glamour For Sale
Roger Pryor	1940	Glamour For Sale
June MacCloy	1940	Glamour For Sale
Warren William	1940	Arizona
Porter Hall	1940	Arizona
Vivienne Osborne	1940	So You Won't Talk?
Bernard Nedell	1940	So You Won't Talk?
Tom Dugan	1940	So You Won't Talk?
Binnie Barnes	1940	This Thing Called Love
Allyn Joslyn	1940	This Thing Called Love
Gloria Dickson	1940	This Thing Called Love

[fol. 3393]

Lee J. Cobb	1940	This Thing Called Love
Gloria Holden	1940	This Thing Called Love
Jonathan Hale	1940	Blondie Plays Cupid
Bruce Cabot	1940	Girls Under 21
Paul Kelly	1940	Girls Under 21
Pat O'Brien	1940	Escape to Glory
John Halliday	1940	Escape to Glory
Melville Cooper	1940	Escape to Glory
Alan Baxter	1940	Escape to Glory
Eric Blore	1940	Lone Wolf Keeps a Date, The
Jonathan Hale	1940	Blondie Goes Latin

Player	*Year*	*Picture*
Tito Guizar	1940	Blondie Goes Latin
Beulah Bondi	1940	Penny Serenade
Anita Louise	1940	Phantom Submarine, The
Chester Morris	1940	Meet Boston Blackie
Amanda Duff	1940	Devil Commands, The
June Storey	1940	Lone Wolf Takes a Chance, The
Henry Wilcoxen	1940	Lone Wolf Takes a Chance, The
Eric Blore	1940	Lone Wolf Takes a Chance, The
Thurston Hall	1940	Lone Wolf Takes a Chance, The
Louise Currie	1940	Pinto Kid, The
Marjorie Cooley	1940	West of Abilene
Luana Walters	1940	Durango Kid, The
Luana Walters	1940	Cross the Sierras
Edith Fellows	1941	Her First Beau
Josephine Hutchinson	1941	Her First Beau
William Tracy	1941	Her First Beau
Una O'Connor	1941	Her First Beau
[fol. 3394]		
Jonathan Hale	1941	Her First Beau
Martha Scott	1941	They Dare Not Love
Paul Lukas	1941	They Dare Not Love
Nan Grey	1941	Under Age
Tom Neal	1941	Under Age
Mary Anderson	1941	Under Age
Alan Baxter	1941	Under Age
Dorothy Faye	1941	North from the Lone Star
Eve Arden	1941	She Knew All The Answers
William Tracy	1941	She Knew All The Answers

The practice of loaning an occasional star, director or technician to another producer, has encouraged producers to place such employees under contract thereby giving employment to many hundreds of talented people, and encouraging the growth of the industry. If producers would be unable to farm out or loan their employees to other producers when they were unable to find appropriate vehicles

for their particular talents, such producers would be reluctant to, and in many cases, would not place the artists, directors and technicians under long term contracts. As a result of refusal of producers to engage artists under contracts, it would be necessary for the artists to spend a considerable amount of time in going from one casting office to another, rather than concentrating upon the performance of their services. Such a practice would discourage talent, would create tremendous economic waste and unemployment and would seriously hamper the development of the motion picture industry in America.

[fol. 3395] Columbia has never participated, directly or indirectly in the profits of any other defendant producer by reason of the exhibition of the latter's pictures, or the exhibition of the pictures of Columbia, or through any other method or means.

In a number of instances where Columbia has borrowed a star from a defendant producer and has made a picture with the participation of such star, many of the theatres affiliated with said defendant producer have not booked or rented the picture made with such star.

In cases where Columbia loaned one of its stars to any other producer, it has been impossible, and it has never been the practice for Columbia Pictures Corporation to share, directly or indirectly, in the receipts from exhibition, and it never shared in such receipts. Obviously, Columbia could not share in such receipts by reason of the ownership in said theatres because it owns no such theatres, and it has never made a contract with a producer to whom it loaned such stars, the terms of which provided that Columbia was to get any part of the receipts for the exhibition of pictures made with the participation of such stars.

In borrowing and loaning artists and other talent, Columbia has never discriminated between the producer defendants herein and other producers, and has borrowed from and loaned to producers solely on the basis of its needs and available talent.

Columbia has licensed and distributed its pictures in competition with the product of other independent producers. In other cases, it has distributed the product of other independent producers together with its own product, without any discrimination. Many independent producers have in the past five years produced some of the best pictures in

the industry. For example, the following pictures have received tremendous public acclaim:

[fol. 3396] COLUMBIA
American Madness
Bitter Tea of General Yen
Washington Merry-Go-Round
So This Is Africa
No More Orchids
Lady for a Day
Man's Castle
Captain Hates the Sea
It Happened One Night
No Greater Glory
Twentieth Century
Broadway Bill
One Night of Love
Love Me Forever
The Whole Town's Talking
She Married Her Boss
Mr. Deeds Goes to Town
The King Steps Out
If You Could Only Cook
She Couldn't Take It
The Music Goes Round
When You're in Love
Theodora Goes Wild
Craig's Wife
Adventure in Manhattan
More Than a Secretary
The Awful Truth
I'll Take Romance
There's Always a Woman
Lost Horizon
Holiday
You Can't Take It With You
Only Angels Have Wings
Blind Alley
Golden Boy
[fol. 3397] Good Girls Go To Paris
There's That Woman Again
Mr. Smith Goes to Washington
His Girl Friday
Too Many Husbands

COLUMBIA—(Continued)

Doctor Takes a Wife
He Stayed For Breakfast
Arizona
This Thing Called Love

UNIVERSAL

100 Men and a Girl
All Quiet on the Western Front
Showboat
Back Street
Imitation of Life
Diamond Jim
The Doomed Battalion
Three Smart Girls
Mad About Music
Frankenstein
Magnificent Obsession
My Man Godfrey
Invisible Man
That Certain Age
Three Smart Girls Grow Up
Letter of Introduction
The Rage of Paris
First Love
Destry Rides Again
Nice Girl
Back Street
Boys From Syracuse
Argentine Nights
Hired Wife
Spring Parade
Seven Sinners

[fol. 3398] WALTER WANGER

Gabriel Over the White House
Algiers
Vogues of 1938
Blockade
History is Made at Night
Stand In
I Met My Love Again
Stage Coach

Trade Winds
Eternally Yours
Slightly Honorable
Foreign Correspondent
Long Voyage Home
House Across the Bay

CHARLIE CHAPLIN

Modern Times
Great Dictator

MAJOR PICTURES CORP.

Pennies from Heaven

HOWARD HUGHES

Hell's Angels
Scar Face

EDWARD SMALL

The Duke of West Point
King of the Turf
Man in the Iron Mask
My Son, My Son
Son of Monte Cristo

PICKFORD-LASKY CORPORATION.

The Gay Desperado

[fol. 3399] SELZNICK.

Little Lord Fauntleroy
Prisoner of Zenda
A Star Is Born
The Adventures of Tom Sawyer
The Garden of Allah
Nothing Sacred
The Young in Heart
Made for Each Other
Intermezzo
Gone With the Wind
Rebecca

HAROLD LLOYD CORPORATION.

The Freshman
Professor, Beware

DAVID L. LOEW PRODUCTIONS.

Wide Open Faces
The Gladiator
So Ends Our Night

WALT DISNEY.

Snow White and the Seven Dwarfs
Pinocchio
Fantasia

SAMUEL GOLDWYN, INC.

Nana
We Live Again
Kid Millions
Wedding Night
Dark Angel
Barbary Coast
[fol. 3400] Splendor
Strike Me Pink
These Three
Wuthering Heights
They Shall Have Music
Dodsworth
Come and Get It
Beloved Enemy
Woman Chases Man
Stellas Dallas
Dead End
Hurricane
Goldwyn Follies
Marco Polo
The Cowboy and the Lady
Real Glory
Raffles
Westerner

PRINCIPAL PRODUCTIONS, INC.

Let's Sing Again
Rainbow on the River

MONOGRAM PICTURES CORPORATION.

Oliver Twist
Hoosier Schoolboy
Legion of Missing Men
Birth of a Baby
Boy of the Streets

GRAND NATIONAL PICTURES CORPORATION.

Damaged Goods

MARCH OF TIME CO.

March of Time (Series of Shorts)

[fol. 3401] HAL ROACH.

Merrily We Live
Topper
Captain Fury
There Goes My Heart
Topper Takes a Trip
Housekeeper's Daughter
Of Mice and Men

REPUBLIC PICTURES CORPORATION.

Man of Conquest
Dick Tracy (Serial)
Lone Ranger (Serial)
Gene Autry (Westerns)

ALEXANDER KORDA

Drums
Prison Without Bars
Four Feathers
Thief of Bagdad
That Hamilton Woman

SOL LESSER

Our Town

HAREFIELD PRODUCTIONS LTD.

Clouds Over Europe

FRANK LLOYD PRODUCTIONS, INC.

Howards of Virginia

ROBERT SHERWOOD PRODUCTIONS INC.

Adam Had Four Sons

[fol. 3402] The exchange of stars is largely due to the changing demand of the stars themselves as well as to the keen competition which now exists for their services. Since the stars are able, in large part, to dictate the terms upon which they are willing to be employed, and desire to be free to make pictures for producers other than those who have them under contract, it is frequently impossible to place a star under contract except on the basis of permitting such star to make pictures for other producers. The stars assert that the continued exploitation of pictures in which they appear, by a single producer with the limited story material that such producer possesses, results in the stars being miscast, thereby losing their appeal with the public. In order to protect themselves against the possibility of such poor casting and to keep their appeal perennial, the stars demand great freedom with respect to the parts which they shall portray, asserting that farming out gives them an opportunity to be cast in good parts. The miscasting of a star results in the star's dissatisfaction and disability to perform at his best, and likewise destroys the investment of the producer in the picture. This often runs into hundreds of thousands of dollars, and neither the producer nor the artist can afford to suffer the loss of prestige, standing and investment in such a case.

Thus, the changing position of the star and the increased emphasis on artistic attainment, together with a scarcity of artists, literary material and the limited financial means of each of the producers, are responsible for the development of the practice of loaning out stars. That practice has nothing whatsoever to do, so far as the answering defendants are concerned, with any alleged control of the production and exhibition by the five producer-exhibitor defendants.

[fol. 3403] Columbia at no time has imposed any harsh onerous or unfair trade practices upon exhibitors in the United States or any part thereof, and it has distributed its pictures to exhibitors in the United States in open competi-

tion with the pictures of other producers including the other defendant producers.

In many cities where there are two first-run theatres, both of which are willing to secure licenses for Columbia's product, Columbia splits its product between them regardless of whether or not such theatres are affiliated with the producer-exhibitor defendants. The following instances during the season 1937-38 are illustrative of such practice:

Town	Theatre	Owner	Affiliated
No. Adams, Mass.	Paramount	Publix	Yes
"	Richmond	R. M. Loew	No
Attleboro, Mass.	Union	Fiber & Shea	No
"	Bates Opera House	Levenson Circuit	No
Providence, R. I.	Strand	National Realty (E. Reed Mgr.)	No
"	Loew's State	Loew's	Yes
Westfield, Mass.	Park	Fiber & Shea	No
"	Strand	Wester Mass Circuit	No
Endicott (Union), N. Y.	Elvin	Comerford	Yes
"	Dittrich	B. W. Dittrich	No
Chicago, Ill.	Sheridan	Essaness	No
"	Vogue	Essaness	No
"	Mont-Clare	B. Cherukas	No
"	Elm	B. Cherukas	No
"	Marshall Sq.	Julius Goodman	No
"	Douglas or West	Julius Goodman	No
Kewanee, Ill.	Rialto	F. W. Shaver	No
"	Peerless	Publix	Yes
Maysville, Ky.	Russell	J. B. Russell	No
"	Washington	Jack Frisch	No

[fol. 3404]

Cleveland, O.	5 Pts. or Plaza	Horwits & Associated	No
"	LaSalle	Gusdonovic	No
"	LaSalle	Gusdonovic	No
"	Commodore	Lefkowich & Greenberger	No
"	Euclid	Lefkowich & Greenberger	No
"	Windemere	Windemere Th. Co.	No
"	Cedar-Lee	Lefkowich & Greenberger	No
"	Heights	Horwits	No
Steubenville, O.	Paramount	Chatkin & Feld	No
"	Grand	Biggio & Son	No
Dallas, Tex.	Rialto or Tower	Interstate	No
"	Mirror	Robb & Rowley	No
Iowa City, Ia.	Strand	T. Brown	No
"	Iowa	L. Kaplan	No
"	Pastime	A. Dunkel	No
"	Iowa	L. Kaplan	No
Muscatine, Ia.	Amusu	C. J. Jamison	No
"	Palace-Uptown	Skouras	Yes
Brookfield, Mo.	Degraw	Skouras	Yes
"	Civic	O. W. Williams	No
Carrollton, Mo.	Uptown	Commonwealth Circuit	No
"	Missouri	Athens Amuse. Co.	No
Carthage, Mo.	Delphus	E. W. Williams	No
"	Crane	Skouras	Yes

Town	Theatre	Owner	Affiliated
Clinton, Mo.	Lee	Commonwealth Circuit	No
"	Uptown	Dickinson	No
Eldorado, Kan.	Eldorado	Skouras	Yes
"	Eris	Fite Circuit	No
Excelsior Spgs., Mo.	Beyer	Skouras	Yes
"	Lyric	E. O. Briles	No
Ft. Scott, Kan.	Yale	Sproule Bros.	No
"	Liberty-Empress	Skouras	Yes
Hays, Kan.	Star	F. L. Lowe	No
"	Strand	Skouras	Yes
[fol. 3405]			
Hoisington, Kan.	Royal	Commonwealth Circuit	No
"	Star	F. L. Lowe	No
Independence, Kan.	Booth	Dickinson	No
"	Main Street	R. H. Montgomery	No
Iola, Kan.	Uptown-Iola-Kelley	Skouras	Yes
"	New	W. A. Weaver	No
Kirksville, Mo.	Family	Frank Anderson	No
"	Kennedy	Skouras	Yes
Lawrence, Kan.	Dickinson-Varsity	Dickinson	No
"	Patee	Commonwealth Circuit	No
Lexington, Mo.	Main Street	Skouras	Yes
"	Eagle	John C. Young	No
Lyons, Kan.	Lyons	Skouras	Yes
"	Star	F. L. Lowe	No
Marysville, Kan.	Rialto	L. Sproule	No
"	Liberty	Skouras	Yes
Monett, Mo.	Gillios	Commonwealth Circuit	No
"	Strand	C. M. Swabb	No
Ottawa, Kan.	Plaza-Webster	L. Sproule	No
"	Cozy	Skouras	Yes
Trenton, Mo.	Plaza-Royal	Commonwealth Circuit	No
"	Rita	G. J. Spencer	No
Hawthorne, Col.	Plaza	E. S. Calvi	No
"	Rex	E. S. Calvi	No
Hot Spgs., Ark.	Paramount-Central	Malco Theas.	No
"	Strand	H. E. Wheatley	No
"	Strand	H. E. Wheatley	No
"	Central	Malco Theas.	No
Milwaukee, Wis.	Palace-Wisconsin	Skouras	Yes
"	Riverside	Riverside Oper.	No
"	Allis	Skouras	Yes
"	Capitol	George Fischer Circuit	No
"	Climax	Chas. Trempe	No
"	Roosevelt	J. A. Ludwig	No
Lidgerwood, N. D.	Roxy	E. Schneider	No
"	Wiley	E. G. Garrison	No
[fol. 3406]			
Thompsonville, Conn.	Franklin	Robt. Ellisno	No
"	Strand	P. Perokas	No
Houma, La.	Grand or New	Affiliated	Yes
"	Fox	Helper & Chauvin	No
Morgan City, La.	Dixie	Affiliated	Yes
"	Opera House	Claude Darcy	No
Natchez, Miss.	Rits or Grand	Saenger	Yes
"	Star	Chas. Moral	No
Reserve, La.	Maurin	Affiliated	Yes
"	Community Club	Comm. Club Thea.	No
Sulpher, La.	Strand	J. M. Heard	No
"	Roosevelt	R. N. Carnahan	No

Town	Theatre	Owner	Affiliated
New York, N. Y.	Orpheum	Bello	No
"	St. Marks	Brandt	No
"	Boemian Annex	Fanchi	No
"	Granada	Interboro	No
Brooklyn, N. Y.	Alhambra	Hattem	No
"	Grand Art	G. Stamatus	No
"	Hollywood	Hattem	No
"	Senate	Randforce	Yes
Hempstead, L. I.	Rivoli-Hempstead	Skouras	Yes
Rockville Center, L. I.	Fantasy	Century	No
Hempstead, L. I.	Hempstead	Skouras	Yes
Rockville Center, L. I.	Strand	Century	No
Mt. Vernon, N. Y.	Embassy	Brandt	No
"	Biltmore	T. & C. Thea. Corp.	No
Suffern, N. Y.	Lafayette	Skouras	Yes
"	Strand	H. Friedman	No
Yonkers, N. Y.	Strand	RKO	Yes
"	Warburton	Sterling Amu. Corp.	No
Freehold, N. J.	Strand	Walter Reade	Yes
"	Liberty	Liberty Th. Inc.	No
Clinton, N. J.	Clinton Point	C. E. Smith	No
Highbridge, N. J.	Highbridge	J. Eller	No
Kearney, N. J.	Hudson	Warner	Yes
"	Regent	A. Siegel	No

[fol. 3407]

Princeton, N. J.	Arcade	J. Strure	No
"	Garden-Playhouse	Casey & Wheeler	No
Elk City, Okl.	Elk	Griffith	No
"	Rex	Mrs. Mary Hunt	No
Enid, Okl.	Mecca-Arcadia	Griffith	No
"	Royal	Roy T. Shield	No
Lawton, Okl.	Palace-Murray	Lawton Thea. Corp.	No
"	Ritz	L. L. Jones	No
Bridgeton, N. J.	Stanley	Atlantic Thea.	No
"	Criteron-Majes.	L. Linker	No
Milton, Pa.	Legionair	Pete Pappas	No
"	Capitol	Publix	Yes
Old Forge, Pa.	Home	A. M. Scaro	No
"	Holland	Publix	Yes
Reading, Pa.	Embassy-State	Wilmer & Vincent	No
"	Astor	Warner	Yes
Shenandoah, Pa.	Capitol	Oppenheimer & Sweet	No
"	Strand	Publix	Yes
Lewiston, Pa.	Pastime	Ike Berney	No
"	Rialto	Paul Klingler	No
Morgantown, W. Va.	Metropolitan	Geo. Sollows	No
"	Warner	Warner Circ.	Yes
Salt Lake, Utah	Star or Roxy	Star Thea. Inc. Roxy Thea. Inc.	No
"	Empire	W. E. Shipley	No
Alameda, Cal.	Alameda	Nasser Bros.	No
"	Strand		
Bluefield, W. Va.	State	Publix	Yes
"	Rialto or Colonial	L. Salsberg	No
Norfolk, Va.	Byrd	J. D. Hofheimer	No
"	Colonial or Wells	S. W. Craver	No

15. Further answering said paragraphs and also paragraphs 180, 181, 182, 183, 184, 185, 186 and 187, Columbia alleges that in marketing its films it licenses its pictures to those exhibitors who will give the best exploitation to its

pictures under the most favorable circumstances, netting [fol. 3408] Columbia the greatest possible return. It is immaterial whether the exhibitor is affiliated with any producer or not. As a matter of fact, Columbia often finds itself virtually at the mercy of some groups of exhibitors wholly unaffiliated with the producer-defendants herein, and Columbia deals with such exhibitors on an unequal bargaining basis which is wholly in their favor.

Many so-called independent exhibitors throughout the country combine for the purpose of dictating terms to producers, including Columbia.

These exhibitor combinations have grown in number and strength in the past ten years. For example, in New York City, there are a number of such exhibitor combinations, each controlling more than a score of theatres. Upon information and belief the practice of some of these exhibitor combinations is to approach an owner of a theatre in their territory and assure him that by their huge buying power, they can compel Columbia and other producers to license pictures to them at a very low rental, and such exhibitor combinations frequently contract with the owner to accept as compensation a percentage of the reduction of his yearly film rental. In dealing with such exhibitor combinations Columbia finds itself unable to bargain effectively so as to obtain a reasonable rental on its pictures. If Columbia refuses to deal with such exhibitor combinations upon their terms, it is threatened by them with a boycott. As a consequence of this practice, Columbia has been compelled to license its pictures to these exhibitor combinations upon terms very harsh and inequitable to it, and such exhibitor combinations have obtained Columbia's product for far less than a fair rental value.

In many cities of the United States today, the important exhibitors are banded together in exhibitor combinations [fol. 3409] which bargain for their pictures with the advantage of collective bargaining and collective purchasing power, and with the other advantage of threat of boycott to any producer who refuses to meet their terms. The market for the exhibition of pictures is limited, and if Columbia is unwilling to meet the terms proposed by the exhibitor combinations in that particular locality, it finds itself unable to arrange for any distribution of its pictures in said territory to other exhibitors upon a fair rental value.

In many instances in the past few years, Columbia has actually been boycotted in certain territories by these local exhibitor combinations.

These operators of circuits of theatres, who are not made defendants in this action, wield tremendous power in the field of exhibition in their respective territories; upon information and belief, some of the affiliated circuits are powerful enough to dictate to their own affiliate producers the terms upon which such chains will book their pictures.

It is impossible for Columbia to investigate the local competitive situation of each of its exhibitor licensees.

In determining whether a particular theatre shall be given a franchise for a first-run or a subsequent run, it is necessary to take into consideration the consistent policy of the theatre, bearing in mind its size, its location, its admission charge, the size of its audience, the amount which the exhibitor is willing to pay for the licensing of the pictures, the auspices under which the picture will be first received in a particular community and many other factors, none of which has any possible relation to the question of whether or not the particular exhibitor is affiliated with any of the producer-exhibitor defendants, or whether the theatre is part of a circuit.

Columbia denies that the so-called small independent exhibitor operating a little theatre in an unpretentious [fol. 3410] neighborhood and charging a very low admission price, suffers any injury by reason of failure to obtain a first or second run, because the patronage of such theatre is perfectly satisfied to view its pictures on a third or subsequent run.

In more than 5400 cities and towns in the United States, in each of which there are less than eight theatres, all theatres in each of such towns are owned by one individual or corporation. This defendant is not able to sell in a competitive market in any of such localities. The exhibitor in such cases is virtually able to dictate his own terms to this defendant.

The fact is that the exhibition end of the motion picture industry has been most profitable and successful in the past fifteen years. Motion picture exhibitors throughout the country, large and small members of the exhibitor combinations and non-members of combinations, have made tremendous sums of money on their investment. During the past ten years of depression, very few exhibitors were forced

out of business but on the contrary their business has increased and their properties have enhanced in value. While the producers of pictures take all the risk and hazard (in recent years, several producers have been forced into bankruptcy), the exhibitors take little or no risk.

Columbia has at no time knowingly permitted any exhibitor to overbuy. It sells its products to exhibitors without regard to the number of pictures that the exhibitor may have bought from others, and it has no actual knowledge of what pictures are being purchased by exhibitors from other companies, nor has it the ability nor the legal power to compel exhibitors to divulge such information to it. As a matter of fact, if Columbia should demand such information from exhibitors, they would refuse to exhibit the pic- [fol. 3411] tures distributed by Columbia rather than give it the necessary information as to their dealings with others. A demand for such information would be regarded by any exhibitor as an unwarranted interference with his business, and this would be true, whether the exhibitor were affiliated or unaffiliated. It is impossible to obtain such information.

Exhibitors license their firms from distributors of motion pictures produced by more than two hundred companies throughout the world. The motion pictures produced in foreign countries enter into competition with pictures produced in the United States. Many foreign pictures have been very successful, and have had extensive runs in the motion picture theatres of the United States in competition with the pictures of Columbia and other American producers. Such pictures include:

"Henry the Eighth"
"Maedchen in Uniform"
"Ghost Goes West"
"Mayerling"
"Rembrandt"
"Carnival in Flanders"
"Moonlight Sonata"
"Elephant Boy"
"We're Going to be Rich"
"Thirty Nine Steps"
"Nine Days a Queen"
"Cardinal Richelieu"
"Escape Me Never"
"Knight Without Armor"
"M"

"Grand Illusion"
"Drums"
"Pygmalion"
"The Lady Vanishes"
"Harvest"
[fol. 3412] *"The Beachcomber"*
"Generals Without Buttons"
"Good-bye, Mr. Chips"
"Carnet de Bal"
"Professor Mamlok"
"Champs Elysees"
"Heart of Paris"
"Ballerina"
"Orage"
"The Count of Monte Cristo"
"Dark Rapture"
"Scarlet Pimpernell"
"Baker's Wife"
"Pep Le Moko"
"Night Train"
"Drums"
"Prison Without Bars"

The motion pictures produced by independent producers here and abroad and exhibited throughout the United States aggregate a vastly greater number than those produced by the major producers.

The competition in the United States from pictures produced abroad is steadily increasing in spite of the war. For the first six months of 1938, French studios produced fifty-five motion picture films with sixty-four additional pictures in production, or about to be produced. The influx into France of capable talent from Germany and Austria due to political upheavals in those countries improved the quality of French production. Whereas the sales resistance to pictures of Germany manufacture is so powerful as to make those pictures almost a negligible factor, there is no similar resistance to pictures made in France.

Recently, leading figures in the motion picture field have formed companies for the distribution of pictures pro- [fol. 3413] duced abroad. The recent announcements of one of such companies indicates that it will distribute no less than twenty-five feature foreign films to a very substantial number of theatres, particularly in the east. A third

company has recently taken over the exclusive distribution of Mexican pictures in the United States. This shows the trend of competition incurred from foreign pictures.

Columbia distributes not only all the pictures produced by itself, but a great number of pictures produced by other producers. Such pictures distributed by Columbia in recent years, the product of other producers, are the following:

1929-1930

Sweethearts on Parade

1930-1931

Charley's Aunt
Meet the Wife
Atlantic
Murder
Africa Speaks
Young Woodley
Man From Chicago
Middle Watch
Night Birds

1931-1932

Pagan Lady
No Greater Love
One Way Trail
Shotgun Pass
Fighting Marshall
Fighting Fool
The Secret Witness
The Dreyfus Case
Texas Cyclone
Daring Danger
Riding Tornado
Two-Fisted Law

[fol. 3414]

1932-1933

Deception
What Price Innocence
The Blonde Captive
Cornered
Western Code
Fighting For Justice
End of the Trail
Obey the Law
Night of Terror
Mussolini Speaks
Man of Action
Silent Men
Whirlwind
Rusty Rides Alone

1933-1934

Rex, King of Wild Horses
Social Register
Song You gave Me

1934-1935

That's Gratitude
Swell Head
Champagne For Breakfast
Together We Live

1935-1936

Calling of Dan Matthews
Mine With the Iron Door
Western Frontier
Heir to Trouble
Western Courage
Lawless Riders
Cattle Thief
Tugboat Princess
Heroes of the Range
Avenging Waters
Fugitive Sheriff
The Secret Patrol
Mysterious Avenger

1936-1937

Pennies From Heaven
Thunder in the City
Beloved Vagabond
Roaring Timber
Unknown Ranger
Rio Grande Ranger
Reckless Ranger
Trouble In Morocco
North of Nome
Outlaws of the Orient
Abdul the Damned
Ranger Courage
Law of the Ranger
Rangers Step In

[fol. 3415]

1937-1938

Woman Against the World
Flight Into Nowhere
Making the Headlines
Trapped by G-Men
Hollywood Round-up
Headin' East
Overland Express
Stagecoach Days
Pioneer Trail
Jungle Menace
Law of the Texan
Convicted
Mysterious Pilot
Under Suspicion
Reformatory
Wide Open Faces
The Gladiator
Stranger From Arizona
Heroes of the Alamo
Rolling Caravans
Phantom Gold
Secrets of Treasure Island
California Frontier

1938-1939

Clouds over Europe
Crime Takes a Holiday
Strange Case of Dr. Meade
Trapped in the Sky
In Early Arizona
Frontiers of '49
Lone Star Pioneers
Law Comes to Texas

1939-1940

Howards of Virginia
U Boat 29
Music in My Heart
Hidden Power
Fugitive at Large
21 Days Together
Green Archer
Terry and the Pirates
Outside the 3-Mile Limit
Passport to Alcatraz

Miracle of Main Street	Fight for Life
Mad Men of Europe	Shadow
I Married Adventure	Deadwood Dick

The exhibitor is not the ultimate consumer. It is not his demands which the producer bears in mind in producing a motion picture but rather the demands of the public, [fol. 3416] which pays admissions to the theatre, which the producer aims to satisfy. The public is the ultimate consumer. The producers aim to meet the taste and fancy of the public at large, and they are not interested in the desires of the exhibitors, except to the extent that such desires reflect the taste and fancy of the public itself. The producers' public is infinitely greater than the handful of exhibitors. The public whose demands the producer must supply extends throughout the world. No picture has ever been successful that did not have a universal appeal. The exhibitor is not familiar with the taste and fancy of the public, except in his small community. An illustration of that fact may be given. A few years ago a leading exhibitor issued an advertisement in the trade press violently attacking a number of prominent motion picture stars and asserting that they had outlived their usefulness and were "poison at the boxoffice." The fact is that after this blast was issued, a number of these stars appeared in motion pictures which attained tremendous success and popularity. The best examples of such pictures and stars are the Columbia picture, "Holiday," with Katherine Hepburn, and the Walter Wanger production "Algiers," with Charles Boyer. These pictures, incidentally, were all produced by independent producers, and their success was instantaneous. The attack upon these stars was abortive, and did not represent the taste of the ultimate consumer, who, in the last analysis, pays his admission money at the box-office and pays only when he likes the picture. This public includes 85,000,000 people who attend motion picture performances in the United States weekly. They are the ultimate market in the United States.

[fol. 3417] Further answering the allegations intending to refer to so-called "Block Booking" contained in paragraph "147" the answering defendants allege that Columbia has never entered into any practice of conditioning the licensing of one film or group of films upon the licensing of another

film or group of films, and that with respect to each and every contract under which Columbia has licensed its pictures on a basis of block booking, such contracts have been wholly voluntary on the part of both Columbia and the exhibitor, whether such exhibitor was a so-called independent exhibitor or an affiliated exhibitor. Where franchises have been issued on a basis of block booking, the affiliated theatres have not been permitted to license the picture of Columbia on a selective basis any more than have the independent exhibitors and exhibitor combinations. It has been the practice to license pictures by block booking for a great many years, long prior to the entry of Columbia in the motion picture field; and the practice has continued to this day. From the time that motion picture companies announced their production schedule at the beginning of the season, it was necessary, in order to insure a proper carrying out of that schedule, that the companies have an outlet for their pictures. Such an outlet could not be depended upon, unless the exhibitors were willing to contract for the entire product. It was likewise important to the exhibitor that he be in a position to insist upon receiving all of the pictures of the producer.

The practice was not foisted upon the exhibitors by the producers, but was rather the result of mutual agreement for the benefit of both. Columbia prepares a schedule each Spring of the number of pictures which it proposes to make for the following season. While this schedule is subject to change in some respects, Columbia adheres to it [fol. 3418] substantially. The production of the pictures called for by this advance schedule requires the investment of many millions of dollars in the employment of stars, purchase of story material, employment of directors and technicians, creation of studio facilities and equipment, costumes, scenery, and a great many other factors. Commitments for these expenditures must be made far in advance of the production of the pictures, and Columbia is compelled to enter into a great many contracts to satisfy these commitments. It must know at the commencement of the season the extent of the outlet which it will have for its pictures during that season. Unless it is permitted to book pictures in block, it will be unable to carry out this program of production.

As a matter of fact, no exhibitor is compelled to take every picture produced by Columbia. In licensing its pic-

tures for exhibition, Columbia does so independently of any other producer of motion pictures, and at no time compels an exhibitor to take so many pictures that he is prevented from securing other pictures through other distributors. The fact is that no exhibitor contracts for the pictures of Columbia exclusively, nor is he compelled to do so. In many cases, where there are two first-run theatres in a particular community, and both theatres are willing to enter into license agreements with Columbia, it permits them to divide the season's product between them on an equal basis or "split". This practice exists whether the exhibitors be affiliated or independent or independent circuits.

Further answering the allegations, designated as "Forcing of Short Subjects and News Reels, etc.," the answering defendants allege, that Columbia has never forced any exhibitor, whether independent, independent circuit or affiliated, to take short subjects and news reels, etc. Columbia does [fol. 3419] not produce or distribute news reels. To the extent that it licenses its short subjects and the other product referred to together with the balance of its season's product, that practice is indulged in with respect to affiliated theatres to the same extent as in the case of so-called independents or exhibitor combinations. If Columbia were unable to license its short subjects, etc. at the commencement of the season at the same time that it licenses its features, it would have to give up the business of producing the remainder of its program. This would drastically curtail its business, and would restrict rather than encourage competition in the field of production of motion pictures.

Further answering the allegations, designated as "designation of play dates", the answering defendants allege, that there is keen competion among the producers of motion pictures for the exhibition of their feature pictures on those days when the greater part of the public attends a motion picture theatre. Where an exhibitor shows the picture for only half a week, and where the picture is licensed on a basis of a percentage of the receipts of the exhibitor, it is naturally to the advantage of the producer to have its pictures exhibited at the times when the public attends the theatre. When a producer invests a very substantial sum in the production of a motion picture, it would be impossible

to recoup its investment if the exhibitor were able to exhibit that picture on the basis of giving the producer a percentage of the receipts on those days when the attendance at the theatre was very low. Much as defendant Columbia would like to have its pictures exhibited on a percentage basis on Saturdays, Sundays and holidays it has had little success in inducing exhibitors to accept such arrangements. [fol. 3420] In the great majority of cases, exhibitors, both independent, independent combinations and affiliated, have refused to exhibit the pictures of Columbia on a percentage basis on Saturdays, Sundays and holidays and Columbia has been deprived of the revenue to which it believes itself entitled from exhibition on those days on a percentage basis. No exhibitor in the United States operates his theatre for the benefit of or in the interest of Columbia nor does Columbia make any unreasonable charge or secure unreasonable compensation for the exhibition of its pictures.

Further answering the allegations, designated as "Clearance", the answering defendants allege that Columbia does not give its licensees for prior-run exhibitions unreasonable protection or clearance over subsequent-runs in the same territory. Prior-run exhibitors are entitled to have a certain amount of protection and clearance. Competition is so keen in the distribution of motion pictures, that if Columbia should refuse to give the necessary clearance to prior-run exhibitors, whether they be independent, independent combinations or affiliated exhibitors, they would refuse to take the product of Columbia, and Columbia could no longer carry on its business successfully.

The practice of granting protection to prior-run exhibitors is not one that Columbia insists upon, but rather is one that the exhibitor insists upon, and which Columbia believes he is entitled to. In fact, there can be no dispute about the right of a prior-run exhibitor against a subsequent-run, if he is to obtain enough revenue from the exhibition of his pictures to warrant the increased amount that he pays for the privilege of his prior run. Prior-run pictures are exhibited in houses where the exhibitor pays a greater rental than does the exhibitor in a subsequent-run house. They are usually in more desirable locations. The [fol. 3421] furnishings and acoustics are of a superior quality, and the auspices under which the picture in a prior-run house is presented are such as to require the exhibitor to make a large investment, and to charge a higher admis-

sion prices and he can accomplish this only by having a sufficient period of protection against a subsequent-run house. Otherwise, the patrons would go only to the subsequent-run house where the price of admission is lower.

Further answering the allegations, designated as "Overbuying", the answering defendants allege, that there is no way that Columbia can put a stop to this practice, if the practice exists. If this practice be unlawful, the culprits are the exhibitors, and not the answering defendants.

Further answering the allegations, designated as "Film Rentals", the answering defendants allege, that there is no discrimination by Columbia in the film rentals charged to exhibitors, whether said exhibitors are or are not part of circuit combinations. In some instances exhibitors, whether they be circuit, affiliated with distributors or otherwise, or individually operated theatres, compel Columbia to license its pictures to them for less than their value.

The method of paying film rental by a percentage of the gross box-office receipts of the exhibitor is not unfair to the exhibitor. It would be the ideal method of determining an adequate and fair rental of pictures. This method has been in use in the field of the legitimate theatre since its earliest advent. The percentage of the gross which Columbia secures from the exhibitor has never been unfair, arbitrary, unreasonable or unconscionable. To the knowledge of these answering defendants, no exhibitor was ever forced to shut down his theatre because of rental fees, [fol. 3422] percentage or otherwise, that he paid to Columbia. Columbia has never acted in combination with other producers or distributors of motion pictures in the licensing of motion picture films to exhibitors.

Further answering the allegations, designated as "Advertising Allowances", the answering defendants allege, that wherever arrangements are made with exhibitors for the sharing of advertising costs, there is no discrimination between affiliated, independent and independent combinations of exhibitors. All are treated alike. The practice of sharing advertising costs is beneficial to both the exhibitor and the producer. With regard to some pictures there have been advertising campaigns. These campaigns have been limited to the following pictures during the seasons beginning with 1935-36:

"Mr. Deeds Goes to Town"
"Music Goes Round"

"King Steps Out"
"When You're in Love"
"Theodora Goes Wild"
"Pennies From Heaven"
"It's All Yours"
"Lost Horizon"
"Awful Truth"
"I'll Take Romance"
"There's Always a Woman"
"Holiday"
"Girls' School"
"You Can't Take It with You"
"Let Us Live"
"Only Angels Have Wings"
"Golden Boy"
"He Stayed for Breakfast"
"His Girl Friday"
"Too Many Husbands"
[fol. 3423] "Doctor Takes a Wife"
"21 Days Together"
"Howards of Virginia"
"Mr. Smith Goes to Washington"
"This Thing Called Love"
"Arizona"
"Adam Had Four Sons"

In practically all instances theatres, whether affiliated or not, paid exactly 50%—no more and no less over and above the regular newspaper advertising budget of such theatre.

Advertising campaigns of this nature were conducted only with respect to percentage bookings in practically every instance.

Further answering the allegations, designated as "Optional contracts", the answering defendants allege, that Columbia does not make any such contracts as are described therein, and in all cases, there is no discrimination between affiliated, independent and independent combinations of exhibitors.

Further answering the allegations, designated as "Contract modifications", the answering defendants allege, that where insistence upon the letter of the contract would work hardship on exhibitors, Columbia has given such exhibitors some of the benefits described in said subdivision notwithstanding the terms of the contract. These modifications are made in favor of affiliated, independent and independ-

ent combinations of exhibitors. There is no discrimination between them, except that on occasion, the independent exhibitor who is financially unable to meet his contractual obligations is given certain indulgence, and in some cases, independent combinations are given such benefits by reason of threats, coercive practice and intimidation of Columbia [fol. 3424] by them. If Columbia should refuse to grant such modifications to the independent combinations, they are threatened with boycotts of their product in the particular territory controlled by such independent combination.

Further answering the allegations, designated as "Overage and Underage", the answering defendants allege, that in those instances where Columbia has permitted overage and underage, it has done so as the only means of selling a license to exhibit its pictures. Without that clause, those licensees, who control the theatres involved, would refuse to accept the license from Columbia and Columbia would thereby be deprived of all revenue from the exhibition of its pictures in the particular territory involved.

Further answering the allegations, designated as "Move-overs", the answering defendants allege, that they do not indulge in this practice in favor of affiliated exhibitors, and do not in any wise discriminate against independent exhibitors in this respect.

For a First Separate and Distinct Defense, the Answering Defendants Allege:

16. That Columbia has a number of contracts with affiliated, independent and independent combinations of exhibitors, which the petitioner seeks to nullify, cancel or modify. All these contracts between Columbia and such exhibitors were made in the City of New York prior to the commencement of this action, and the parties to such contracts are all subject to the jurisdiction of this court. The exhibitors domiciled in this district having contracts with Columbia, which the petitioner seeks to nullify and cancel, are the following:

[fol. 3425] Catskill Theatres Corp.
M. F. Tubbs
Mitchell Conery
A. McNamara
Philip Eisenberg
Robert C. Kay

Coney Island Motion Picture Corp.
Chester Didsbury
Kimball Amuse. Corp.
Highland Theatrical Corp.
Manor Theatre Corp.
Loren Theatre, Inc.
Bennie Berman, Joseph Rosen, co-partners
Arthur Enterprises, Inc.
Gemma Amusement Corp.
Tryon Amusement Corp.
Bell Amusement Corp.
The Marcus Loew Booking Agency, a corporation
Radio City Music Hall Corporation.

17. Columbia has a number of contracts with artists which the petitioner seeks to nullify, cancel or modify. All these contracts between Columbia and such artists were made in the United States prior to the commencement of this action, and the parties to such contracts are all subject to the jurisdiction of this Court and are domiciled within the United States. Such artists with whom Columbia has contracts include Irene Dunne and Cary Grant.

18. The aforesaid individuals, firms and corporations, whose contracts are sought to be affected by the petition herein, were and are necessary and indispensable parties to this suit, and no proper determination of this suit can be had without the presence of said parties herein.

[fol. 3426] For a second separate and distinct defense, the answering defendants allege:

19. That heretofore and on or about May 7, 1937, this petitioner instituted an action against the defendant, Columbia Pictures Corporation and others, in the United States District Court, Northern District of Texas, in which petitioner alleged that defendant, Columbia Pictures Corporation, had conspired with others to restrain trade and commerce in motion picture films and to monopolize or attempt to monopolize the exhibition of motion picture films in the States of Texas and New Mexico, in violation of an Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" and of the acts amendatory thereof and supplemental thereto; Columbia Pictures Corporation filed an

answer in that action in said court; thereafter such proceedings were had in said action that a final decree was entered in said court on October 13, 1937, in which it was adjudged and decreed that defendant, Columbia Pictures Corporation among others, had engaged in a combination, conspiracy and agreement with some of the defendants in said action to restrain trade and commerce in motion pictures in violation of the aforementioned statute; on appeal from said decree to the United States Supreme Court, said final decree was affirmed. (Interstate v. United States, 304 U. S. 55.)

20. Upon information and belief, the issues embraced in said action and therein litigated, included and embraced the acts alleged in the petition herein to be in violation of law; in said action the court therein had jurisdiction to hear and determine, and there could have been there litigated, heard and determined therein all of the acts complained of in the [fol. 3427] petition herein alleged to have been committed by defendant, Columbia Pictures Corporation and the other Columbia defendants.

21. The defendant Columbia Pictures Corporation was enjoined and restrained from doing the acts mentioned and described in said Decree, a copy of which is hereto annexed and made a part of this answer as Exhibit 1.

22. By reason of the premises, the acts and matters complained of in the petition herein are res adjudicata as against all of the Columbia defendants.

For a third separate and distinct defense, the answering defendants allege:

23. That heretofore and on or about the 28th day of April, 1939, this petitioner instituted an action against the defendant Columbia Pictures Corporation and others in the United States District Court for the Western District of Oklahoma, entitled *United States of Am[illegible] v. Griffith Amusement Company et al.*, in which petitioner alleged that defendant Columbia Pictures Corporation had conspired with others to restrain trade and commerce in motion picture films and to monopolize and to attempt to monopolize the exhibition of motion pictures in violation of an Act of Congress of July 2, 1890, entitled, "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies"; Columbia

Pictures Corporation has filed an answer in that action in said Court and said action is still pending and undisposed of.

24. That heretofore and on or about the 7th day of August, 1939, this petitioner instituted an action against the defendant Columbia Pictures Corporation and others in the [fol. 3428] United States District Court for the Western District of New York, entitled, *United States of America* v. *Schine Chain Theatres, Inc., et al.*, in which petitioner alleged that defendant Columbia Pictures Corporation had conspired with others to restrain trade and commerce in motion picture films and to monopolize and to attempt to monopolize the exhibition of motion pictures in violation of an Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies"; Columbia Pictures Corporation has filed an answer in that action in said Court and said action is still pending and undisposed of.

25. That heretofore and on or about the 11th day of August, 1939, this petitioner instituted an action against the defendant Columbia Pictures Corporation and others in the United States District Court for the Middle District of Tennessee, Nashville Division, entitled, *United States of America* v. *The Crescent Amusement Company, et al.*, in which petitioner alleged that defendant Columbia Pictures Corporation had conspired with others to restrain trade and commerce in motion picture films and to monopolize and to attempt to monopolize the exhibition of motion pictures in violation of an Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies"; Columbia Pictures Corporation has filed an answer in that action in said Court and said action is still pending and undisposed of.

26. Upon information and belief, the issues embraced in each of the actions referred to and described in paragraphs 23, 24 and 25, respectively, and in each of said actions being litigated, include and embrace the acts alleged in the peti-[fol. 3429] tion herein to be in violation of law; in each of said actions the Court therein has jurisdiction to hear and determine and there can be there litigated, heard and determined all of the acts complained of in the petition herein

alleged to have been committed by defendant Columbia Pictures Corporation and the other Columbia defendants.

27. The defendants herein plead each of said actions referred to and described hereinabove in bar of this action.

Wherefore, these answering defendants pray that the petition be dismissed, together with the costs and disbursements of the action.

Schwartz & Frohlich, Attorneys for Defendants, Columbia Pictures Corporation, Screen Gems, Inc., Columbia Pictures of Louisiana, Incorporated, 1450 Broadway, New York City, New York; (Sgd.) Herman Finkelstein.

March, 1941.

Charles Schwartz, Louis D. Frohlich, Herman Finkelstein, Arthur H. Schwartz, Counsel and Members of Said Firm.

[fol. 3430] EXHIBIT 1 TO ANSWER

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS

No. 3736-992. Equity

UNITED STATES OF AMERICA, Complainant,

vs.

INTERSTATE CIRCUIT, INC., TEXAS CONSOLIDATED THEATRES, INC., Karl Hoblitzelle, R. J. O'Donnell, Paramount Pictures Distributing Company, Inc., Vitagraph, Inc., RKO-Radio Pictures, Inc., Columbia Pictures Corporation, United Artists Corporation, Universal Film Exchanges, Inc., Metro-Goldwyn-Mayer Distributing Corporation, Metro-Goldwyn-Mayer Distributing Corporation of Texas, Twentieth Century-Fox Film Corporation, and Twentieth Century-Fox Film Corporation of Texas, Defendants

FINAL DECREE—Filed October 13, 1937

This cause having come on to be heard at a special term of the district court of the United States for the Dallas Division of the Northern District of Texas, upon the plead-

ings, the agreed statement of facts and the evidence, both [fol. 3431] oral and documentary, introduced by the respective parties in open court, and having been argued by counsel, and the Court having filed its opinion herein on the 25th day of September, 1937,

It is hereby ordered, adjudged and decreed as follows:

(1) That the defendants, Paramount Picture Distributing Company, Inc., R. K. O.-Radio Pictures, Inc., Columbia Pictures Corporation, United Artists Corporation, Universal Film Exchanges, Inc., and Twentieth Century-Fox Film Corporation of Texas, by including at the instance and behest of the defendants, Interstate Circuit, Inc., Karl Hoblitzelle and R. J. O'Donnell, in license agreements for motion picture films released and distributed by them beginning with the exhibition season of 1934-35 and for each season subsequent thereto, with subsequent run exhibitors in the cities of Dallas, Fort Worth, Houston and San Antonio, provisions requiring that such motion picture films so released and distributed by them that had been shown in the same city first run for a night adult lower floor admission price of 40¢ or more should not be exhibited by said subsequent run exhibitors for less than a night adult lower floor admission price of 25¢ and should not be exhibited as a part of a double feature program, have engaged in a combination, conspiracy and agreement with said defendants, Interstate Circuit, Inc., Karl Hoblitzelle and R. J. O'Donnell, to restrain trade and commerce in said motion picture films, in violation of an Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

[fol. 3432] (2) That the defendant, Vitagraph, Inc., by including at the instance and behest of the defendants, Interstate Circuit, Inc., Karl Hoblitzelle and R. J. O'Donnell in its license agreements with the subsequent run exhibitors in the cities of Dallas, Fort Worth, Houston and San Antonio beginning with the exhibition season of 1934-1935 and for each exhibition season subsequent thereto, said restriction as to minimum night adult lower floor admission price, has engaged in a combination, conspiracy and agreement with said defendants, Interstate Circuit, Inc., Karl Hoblitzelle and R. J. O'Donnell to restrain trade and commerce in said motion picture films, in violation of an

Act of Congress approved July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies."

(3) That the defendant, Metro-Goldwyn-Mayer Distributing Corporation, by including at the instance and behest of the defendants, Interstate Circuit, Inc., Karl Hoblitzelle and R. J. O'Donnell, in its license agreements with subsequent run exhibitors in the cities of Dallas, Fort Worth and San Antonio, beginning with the exhibition season 1934-1935 and for each exhibition season subsequent thereto, said restriction as to minimum night adult lower floor admission price, has engaged in a combination, conspiracy and agreement with said defendants, Interstate Circuit, Inc., Karl Hoblitzelle and R. J. O'Donnell to restrain trade and commerce in said motion picture films in violation of an Act of Congress approved July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies."

(4) That the aforesaid provisions as to minimum night adult lower floor admission price and double featuring so [fol. 3433] included by the defendants, Paramount Pictures Distributing Company, Inc., Vitagraph, Inc., R. K. O.-Radio Pictures, Inc., Columbia Pictures Corporation, United Artists Corporation, Universal Film Exchanges, Inc., Metro-Goldwyn-Mayer Distributing Corporation and Twentieth Century-Fox Film Corporation of Texas, at the instance and behest of the defendants, Interstate Circuit, Inc., Karl Hoblitzelle and R. J. O'Donnell upon subsequent run-exhibitors of motion picture films released and distributed by the distributor defendants in the cities above named are illegal and void.

(5) That each and every one of the corporate defendants and their respective officers, agents, representatives and employees, and each of the individual defendants be, and they are hereby, perpetually enjoined and restrained from continuing in said combination, conspiracy and agreement.

(6) That the defendants, Paramount Pictures Distributing Company, Inc., R. K. O.-Radio Pictures, Inc., Columbia Pictures Corporation, United Artists Corporation, Universal Film Exchange, Inc., and Twentieth Century-Fox Film Corporation of Texas, and their respective officers, agents, representatives and employees be, and they are

hereby, perpetually enjoined and restrained from enforcing or attempting to enforce the provisions in their respective license agreements with subsequent run exhibitors of motion picture films released and distributed by them in the cities above named, requiring such subsequent run exhibitors to charge a minimum night adult lower floor admission price of not less than 25¢ for motion pictures that had previously been exhibited in the same city for a night adult lower floor admission price of 40¢ or more, and pro- [fol. 3434] hibiting said subsequent run exhibitors from showing said motion picture films as a part of a double feature program.

(7) That the defendants, Vitagraph, Inc., and Metro-Goldwyn-Mayer Distributing Corporation, their officers, agents, representatives and employees be and they are hereby perpetually enjoined and restrained from enforcing or attempting to enforce said provisions in their said license agreements with subsequent run exhibitors of motion picture films released and distributed by them in the cities above named, requiring such subsequent run exhibitors to charge a minimum night adult lower floor admission price of not less than 25¢ for motion pictures that had previously been exhibited in the same city for a night adult lower floor admission price of 40¢ or more.

(8) That the defendants, Paramount Pictures Distributing Company, Inc., Vitagraph, Inc., R. K. O.-Radio Pictures, Inc., Columbia Pictures Corporation, United Artists Corporation, Universal Film Exchanges, Inc., Metro-Goldwyn-Mayer Distributing Corporation, Twentieth Century-Fox Film Corporation and Twentieth Century-Fox Film Corporation of Texas be, and they are hereby, enjoined and restrained from including in any future license agreements with subsequent run exhibitors in any city in the states of Texas or New Mexico, or elsewhere, where the defendants, Interstate Circuit, Inc., Texas Consolidated Theatres, Inc., this latter company not having made any such agreement since 1934-35, Karl Hoblitzelle and R. J. O'Donnell operate motion picture theatres, any restrictions as to the admission price to be charged by said subsequent run exhibitors for such motion picture films or as to double-featuring as a result of any combination, conspiracy or agreement among [fol. 3435] the said distributor defendants, and any of them,

or between the said distributor defendants, and any of them, and the said exhibitor defendants, and any of them.

(9) That the defendant, Interstate Circuit, Inc., its officers, agents, representatives and employees, and the individual defendants be, and they are hereby, perpetually restrained and enjoined from enforcing or attempting to enforce any provisions in their said license agreements with each or any of the distributor defendants requiring said distributor defendants, or any of them, to impose upon subsequent run exhibitors of motion picture films released and distributed by said distributor defendants the restrictions as to night adult lower floor admission price or against double featuring hereinbefore referred to.

(10) This decree does not affect the legal right of any distributor, without understanding, or, agreement with any other distributor or exhibitor, to contract with an exhibitor for the exclusive exhibition of his copyrighted motion pictures, or, for time of exhibition.

(11) That the petitioner recover of the defendants its costs herein.

Dallas, Texas, this 13th day of October, 1937.

Wm. H. Atwell, U. S. District Judge.

[fol. 3436] In the District Court of the United States

[Title omitted]

Answer of United Artists Corporation to Amended and Supplemental Complaint

Defendant United Artists Corporation answering the amended and supplemental complaint of the plaintiff by its attorneys, O'Brien, Driscoll & Raftery, respectfully alleges:

1. Defendant denies each and every allegation of paragraphs 1 and 2 of plaintiff's amended and supplemental complaint.

2. Defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraphs 3 (a) (b); 4; 5 (a) (b) (c) (d) (e); 6 (a) (b) (c); 7 (a) (b); 9 (a) (b) (c); 10 (a) (b) (c) (d) of plaintiff's amended and supplemental complaint.

3. Defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraphs 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, [fol. 3437] 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79 and 80 of plaintiff's amended and supplemental complaint.

4. Defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraph 63 of plaintiff's amended and supplemental complaint, except that defendant admits that it released the number of feature pictures mentioned and described in said paragraph as features released by United Artists.

5. Defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraphs 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105 and 106 of plaintiff's amended and supplemental complaint.

6. Defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraph 107 of plaintiff's amended and supplemental complaint, except that the defendant admits that it from time to time makes a separate contract with exhibitors for the exhibition of photoplays produced by each of the respective producers using the facilities of the defendant for distribution.

7. Defendant denies each and every allegation of paragraph 108 of plaintiff's amended and supplemental complaint, except that defendant admits that the quality of feature pictures, as box-office attractions, varies widely.

8. Defendant denies each and every allegation of paragraphs 109, 110, 111, 112, 113, 114 and 115 of plaintiff's amended and supplemental complaint, except that defendant admits that it makes exhibition license agreements with various exhibitors for the exhibition of feature pictures distributed by the defendant, and for the contents of said agreements respectfully asks leave to refer to the origi- [fols. 3438-3440] nals thereof.

9. Defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraphs 116, 117, 118, 119, 120, 121, 122 and 123 of plaintiff's amended and supplemental complaint.

10. Defendant denies each and every allegation of paragraphs 124, 125, 126, 127 and 128 of plaintiff's amended and supplemental complaint.

11. Defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraphs 129, 130, 131 and 132 of plaintiff's amended and supplemental complaint.

12. Defendant denies each and every allegation of paragraphs 140 and 141 of plaintiff's amended and supplemental complaint in so far as it alleges that the production of motion pictures is in or a part of interstate trade or commerce.

13. Defendant denies each and every allegation of paragraphs 142, 143, 144, 145, 146, 147, 148, 149 (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p), 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186 and 187 of plaintiff's amended and supplemental complaint.

Wherefore, defendant demands judgment dismissing the plaintiff's amended and supplemental complaint together with the costs and disbursements of this action.

O'Brien, Driscoll & Raftery, by Edward C. Raftery,
Attorneys for Defendant, United Artists Corporation. Office & P. O. Address, 152 West 42nd Street, Borough of Manhattan, City of New York.

[fol. 3441] In the District Court of the United States

[Title omitted]

Answer of Universal Corporation et al. to Amended and Supplemental Complaint

Defendants, Universal Corporation, Universal Pictures Company, Inc., Universal Film Exchanges, Inc. and Big U Film Exchange, Inc., by their attorney, Charles D. Prutzman, answering plaintiff's Amended and Supplemental Complaint, respectfully allege:

1. Defendants deny each and every allegation of paragraphs 1 and 2 of plaintiff's Amended and Supplemental Complaint.

2. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of paragraphs 3 (a) (b), 4, 5 (a) (b) (c) (d) (e), 6 (a) (b) (c), 7 (a) (b), 9 (a) (b) (c), 11, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, and 72 of plaintiff's Amended and Supplemental Complaint.

[fol. 3442] And further deny that Universal Film Exchanges, Inc. is a wholly owned subsidiary of Universal Corporation and that Big U Film Exchange, Inc. is a wholly owned subsidiary of Universal Corporation, as alleged in Subdivisions (c) and (d) of Paragraph 10, but admit that Universal Film Exchanges, Inc. is a wholly owned subsidiary of Universal Pictures Company, Inc. and that Big U Film Exchange, Inc. is a subsidiary of Universal Pictures Company, Inc. and Universal Corporation, which together own all of its capital stock.

3. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraphs 76 and 78 of plaintiff's Amended and Supplemental Complaint, except defendants admit that there were produced and released the number of photoplays listed in said paragraphs as features produced by Universal during the respective seasons referred to in said paragraphs, and except that it denies that Universal Chain Theatres Corporation operated theatres in Canada or the District of Columbia, but it admits that it had an interest in the Griffith Amusement Company which operates theatres in Oklahoma and Texas and in the Schine Chain which operated theatres in New York and Ohio.

4. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraphs 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 and 107 of plaintiff's Amended and Supplemental Complaint.

5. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraph 108 of plaintiff's Amended and Supplemental Complaint, [fol. 3443] except that defendants admit that the quality of feature pictures varies widely as Box Office attractions.

6. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraphs

109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, and 132 of plaintiff's Amended and Supplemental Complaint, except that defendants aver that exhibition license agreements are made with various exhibitors for the exhibition of Universal pictures in theatres in the United States of America, and the defendants respectfully ask leave to refer to the originals of said agreements for the contents thereof.

7. Defendants deny each and every allegation of Paragraphs 133 to 141, inclusive, of plaintiff's Amended and Supplemental Complaint in so far as said paragraphs attempt to allege that the business of producing motion pictures is in or a part of Interstate Trade and Commerce.

8. Defendants deny each and every allegation of Paragraphs 142, 143, 144, 145, 146, 147, 148, 149 (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p), 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186 and 187 of plaintiff's Amended and Supplemental Complaint.

Wherefore defendants demand judgment dismissing plaintiff's Amended and Supplemental Complaint, together with the costs and disbursements of this action.

Charles D. Prutzman, Attorney for Universal Defendants. Office & Post Office Address, 1250 Sixth Avenue, Borough of Manhattan, New York City.

[fol. 3444] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 87-273

UNITED STATES OF AMERICA, Plaintiff

v.

PARAMOUNT PICTURES, INC., ET AL., Defendants

Consent Decree—Rules of Arbitration and Appeals

[fol. 3445] DECREE—Filed November 20, 1940

The United States of America having filed its Petition herein on July 20, 1938, and its Amended and Supplemental Complaint on November 14, 1940; the defendants: Paramount, Pictures Inc.; Paramount Film Distributing Corporation; Loew's, Incorporated; Radio-Keith-Orpheum Cor-[fol. 3446] poration; RKO Radio Pictures, Inc.; Keith-Albee-Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros. Pictures, Inc.; Vitagraph, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; and National Theatres Corporation [1] having appeared and severally filed their answers to such Petition and to such Amended and Supplemental Complaint and having asserted the truth of their answers and their innocence of any violation of law; and no testimony having been taken, but each of the consenting defendants having consented to the entry of this decree without any findings of fact, upon condition that neither such consent, nor this decree itself, nor the entry of this decree, nor any statement, provision or requirement contained in this decree, shall be or shall be construed as being (1) an admission or adjudication that the allegations of the Petition or of the Amended and Supplemental Complaint, or any of them, are or is true, or that such defendants, or any one or more of them, have or has violated or are or is violating any statute or law, or (2) evidence that such allegations, or any of them, are or is true, or that such defendants, or any one or more of them, have or has violated any statute or law, or (3) an admission or

[1] The above-named defendants are referred to hereinafter as the consenting defendants.

adjudication that the doing of any of the acts or things hereinafter enjoined or the failure to do any of the acts or things hereinafter directed to be done would constitute a violation of any statute or law, and upon the further conditions here-[fol. 3447] inafter set forth; and the United States of America, by its counsel, having consented to the entry of this decree and to each and every provision thereof upon such conditions, and having moved the Court for the entry of this decree;

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

I

The Court has jurisdiction of the parties hereto; and for the purposes of this decree and of proceedings for the enforcement thereof, and for no other purpose, the Court has jurisdiction of the subject matter hereof and the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890 entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies".

The Petitioner not having offered any proof of its allegations that defendants have violated the antitrust laws, and defendants having denied each and every such allegation, this Court has not determined or adjudicated and by this decree does not determine or adjudicate, and this is not a decree to the effect that any of said defendants has violated or is now violating any of such laws, or any other statute; and this decree relates solely to future conduct herein below specified and is not based upon any finding, determination, or adjudication that any right or statute has yet been or is now being violated.

II

Each consenting defendant, its successors, officers, directors, agents and employees, and all persons and corporations [fol. 3448] acting under, through, or for it, hereby is and are enjoined from doing the acts prohibited by this decree, and is and are directed to do the acts thereby required.

III

No consenting defendant engaged in the distribution of motion pictures (hereinafter referred to as a distributor

defendant) shall license or offer for license [1] a feature motion picture [2] (hereinafter sometimes referred to as a feature) for public exhibition within the United States of America at which an admission fee is to be charged, until the feature has been trade shown [3] within the exchange district [4] in which the public exhibition is to be held. Every trade showing shall be preceded by a notice, published in a [fol. 3449] trade publication [5] having general circulation among exhibitors [6] in such exchange district, which shall state the title of the picture and the date and the time when and the place or places where it will be trade shown.

IV

(a) No distributor defendant shall offer for license or shall license more than five features in a single group. In offering its features for license to an exhibitor a distributor may change the combinations of features in groups as it may from time to time determine, and may license or offer for license as many groups of features as it may from time

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[1] License means (as a verb) to make an agreement, or (as a noun) an agreement, by which a distributor grants the right to exhibit a motion picture in any theatre engaged in the exhibition of motion pictures for profit.

[2] A feature motion picture is a motion picture approximately 5,000 feet, or more, in length.

[3] A trade showing is an exhibition of a feature at a theatre or projection room for the benefit of exhibitors generally.

[4] Each distributor defendant shall file with the Department of Justice a map of each of its exchange districts, showing the territorial limits thereof. Changes in the territorial limits of an exchange district shall be made only after two weeks' notice to the Department of Justice. References in this Section and in Sections V, IX and XVIII hereof to exchange districts are to exchange districts of each distributor defendant, as constituted from time to time.

[5] Trade publication means a daily or weekly newspaper or magazine which is devoted primarily to news concerning the motion pictpre industry.

[6] Exhibitor means any individual, partnership, unincorporated association or corporation engaged in the public exhibition of motion pictures in a theatre or theatres for profit.

to time determine, provided that the license or offer for license of one group of features shall not be conditioned upon the licensing of another feature or group of features.

(b) No distributor defendant shall require an exhibitor to license short subjects, newsreels, trailers, or serials (hereinafter collectively referred to as shorts) as a condition of licensing features. No distributor defendant shall require an exhibitor to license reissues, westerns,[1] or foreigns[2] (hereinafter collectively referred to as foreigns) as a condition of licensing other features.

[fol. 3450] Where a license has been entered into, controversies arising upon a complaint by an exhibitor that the licensing to him of one group of features was conditioned by the distributor upon the licensing of another feature or group of features or the licensing of shorts or foreigns shall be subject to arbitration. An exhibitor shall have no right to assert any such claim unless he shall have mailed to the distributor at its Home Office a notice in writing of such claim and of the grounds thereof, not later than two days after receipt by the exhibitor of the distributor's written approval of the exhibitor's signed application or applications for such features, shorts or foreigns. The power[3] of the arbitrator in deciding any such controversy shall be limited to making (1) a finding as to whether or not the licensing of such features was so conditioned; and, if the finding be in the affirmative, (2) an award cancelling the license for (or to the extent that it may relate to) such other feature or group of features, or such shorts or foreigns.

Where no license has been entered into, controversies arising upon a complaint by an exhibitor that a distributor defendant has offered for license to him more than five

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[1] Westerns are those western pictures which are not of the usual character and type of, and are inexpensively produced as compared with, the distributor's general line of features.

[2] Foreigns are features produced outside of the United States except such as are produced in the English language by the distributor or a subsidiary or affiliate thereof.

[3] When, in any arbitration under this decree, the finding of the arbitrator shall be that the complainant has not sustained his complaint, the arbitrator shall enter an award dismissing the complaint.

features in a single group or that the offer of a license to him of one group of features was conditioned upon the licensing of another feature or group of features, or the licensing of shorts or foreigns, shall be subject to arbitration. An exhibitor shall have no right to assert any claim that an offer so to license such features was so made or [fol. 3451] conditioned unless he shall have mailed to the distributor at its Home Office a notice in writing of such claim and of the grounds therefor not later than five days after the exhibitor claims the alleged offer was made. The power [4] of the arbitrator in deciding any such controversy shall be limited to making (1) a finding as to whether or not the offer to license such features was so made or conditioned; and, if the finding be in the affirmative, (2) an award imposing upon the distributor making such offer a penalty in an amount not to exceed five hundred dollars ($500.00). Such penalty shall be payable into the arbitration fund referred to in subdivision 8 of Section XXII hereof.

V

No license for features to be exhibited in theatres located in one exchange district [1] shall include theatres located in another exchange district, nor shall the licensing of features for exhibition in theatres located in one exchange district be conditioned upon the licensing of a feature or group of features for exhibition in theatres located in another exchange district.

Controversies arising upon a complaint by an exhibitor thereby affected that the licensing by a distributor defendant of features for exhibition in theatres located in one exchange district was conditioned upon the licensing of a feature or group of features for exhibition in theatres located in another exchange district shall be subject to arbi- [fol. 3452] tration. The power [2] of the arbitrator in deciding any such controversy shall be limited to making (1) a finding as to whether or not the licensing of features for exhibition in theatres located in one exchange district was so conditioned upon the licensing of a feature or group of

[4] See footnote 3 to this Section.

[1] See footnote 4 to Section III.

[2] See footnote 3 to Section IV.

features for exhibition in theatres located in another exchange district; and, if the finding be in the affirmative, (2) an award imposing upon the distributor defendant so licensing features a penalty in an amount not to exceed five hundred dollars ($500.00), payable into the arbitration fund referred to in subdivision 8 of Section XXII hereof.

VI

No distributor defendant shall refuse to license its pictures for exhibition in an exhibitor's theatre on some run (to be designated by the distributor) upon terms and conditions fixed by the distributor which are not calculated to defeat the purpose of this Section, if the exhibitor can satisfy reasonable minimum standards of theatre operation and is reputable and responsible, unless the granting of a run on any terms to such exhibitor for said theatre will have the effect of reducing the distributor's total film revenue in the competitive area in which such exhibitor's theatre is located. Controversies arising upon a complaint by an exhibitor that, contrary to the provisions of this Section, a distributor defendant has refused so to license its pictures shall be subject to arbitration. The power[1] of the arbi-

[1] See footnote 3 to Section IV.

trator in deciding any such controversy shall be limited to [fol. 3453] making (1) a finding as to whether or not, contrary to the provisions of this Section, the distributor has refused to license its pictures to the complainant for exhibition in said theatre; and, if the finding be in the affirmative, (2) an award directing the distributor to offer its pictures for license to the complainant for exhibition in said theatre on a run to be designated by the distributor and upon terms and conditions fixed by the distributor which are not calculated to defeat the purpose of this Section. The burden of showing that granting a run on any terms to the complainant will have the effect of reducing the distributor's total film revenue in the competitive area in which the complainant's theatre is located shall be upon the distributor.

Any distributor defendant affected by such an award may institute a further arbitration proceeding to be relieved therefrom on the ground that since the making of the award the granting of a run in compliance therewith has had the effect of reducing the distributor's total film revenue in the

competitive area in which the complainant's theatre is located, and, in the event that the arbitrator finds that the granting of a run in compliance with the award has had the effect of reducing the distributor's total film revenue in said area, he shall vacate the award.[1]

VII

Controversies arising upon the complaint of an exhibitor that a feature licensed to him by a distributor defendant for exhibition in a particular theatre is generally offensive in the locality served by such theatre on moral, religious [fol. 3454] or racial grounds shall be subject to arbitration. An exhibitor shall have no right to assert any such claim unless written notice of his election to cancel such feature, together with a statement of his reasons therefor, shall have been mailed to the distributor defendant at its Home Office not later than ten days after the receipt by the exhibitor of the distributor's written approval of the exhibitor's signed application for such feature. In such event the license in so far as it relates to the exhibition of such feature in the theatre specified in the notice shall be deemed cancelled unless within five days after receipt of such notice, the distributor shall have mailed to the exhibitor a notice in writing of its denial of such claim and of its intention to arbitrate the controversy. The power[1] of the arbitrator in deciding any such controversy shall be limited to making (1) a finding as to whether or not the feature is generally offensive in the locality served by the exhibitor's theatre on moral, religious or racial grounds; and, if the finding be in the affirmative, (2) an award cancelling the license in so far as it relates to the exhibition of such feature in said theatre.

VIII

Controversies arising upon the complaint of an exhibitor that the clearance[1] applicable to his theatre is unreasonable

[1] See footnote 3 to Section IV.

[1] (Section VII) See footnote 3 to Section IV.

[1] (Section VIII) Clearance means the period of time, fixed by agerement between a distributor and an exhibitor, prior to the expiration of which a feature licensed for prior exhibition in a theatre may not be exhibited in another theatre or theatres.

[fol. 3455] shall be subject to arbitration under the following provisions:

It is recognized that clearance, reasonable as to time and area, is essential in the distribution and exhibition of motion pictures.

In determining whether any clearance complained of is unreasonable, the arbitrator shall take into consideration the following factors and accord to them the importance and weight to which each is entitled, regardless of the order in which they are listed:

(1) The historical development of clearance in the particular area where the theatres involved are located;

(2) The admission prices of the theatres involved;

(3) The character and location of the theatres involved, including size, type of entertainment, appointments, transit facilities, etc.;

(4) The policy of operation of the theatres involved, such as the showing of double features, gift nights, give-aways, premiums, cut rate tickets, lotteries, etc.;

(5) The rental terms and license fees paid by the theatres involved and the revenues derived by the distributor defendant from such theatres;

(6) The extent to which the theatres involved compete with each other for patronage; and

(7) All other business considerations, except that the arbitrator shall disregard the fact that a theatre involved is affiliated with a distributor or with a circuit of theatres.

The power [2] of the arbitrator in deciding any such controversy shall be limited to making (1) a finding as to [fol. 3456] whether or not the clearance complained of is unreasonable; and, if the finding be in the affirmative, (2) an award fixing the maximum clearance between the theatres involved which may be granted in licenses thereafter entered into by the distributor defendant which is a party to the arbitration. Subject to the provisions of Section XVII hereof, the award may fix such maximum clearance under any then existing franchise or any license entered

[2] See footnote 3 to Section IV.

into pursuant to such franchise between such distributor defendant and any other party bound by this decree.

Any distributor defendant or any exhibitor affected by such an award may institute a further arbitration proceeding for a modification thereof upon the ground that since the making of the award the conditions with respect to the theatres involved therein have so changed as to warrant modification, and, in the event that the arbitrator finds that there has been such change,[2] he shall make a redetermination of the maximum clearance.

Nothing contained in this Section shall be deemed to restrict, and no award made in any arbitration under this Section shall restrict, the exhibitor's right to license for any theatre any run which he is able to negotiate with any distributor, nor the distributor's right to license for any theatre any run which it desires to grant.

Nothing contained in this Section and no award hereafter entered in any arbitration in accordance with its provisions shall apply to licensing the exhibition of any special [fol. 3457] feature,[3] provided such special feature is licensed under an exhibition contract applicable only thereto, or to the right of a distributor defendant to include in such contract and to make a part thereof such special terms and conditions, including such special clearance provision or provisions, as such distributor shall fix, establish and enforce for and in connection with the exhibition of such special feature.

IX

In booking prints for exhibition by exhibitors competing on the same run in the same exchange district,[1] a distributor defendant shall not withhold delivery of prints available in its exchange from one exhibitor in order to give a competing exhibitor a prior playing date not provided for in his license. It is recognized that distributors must be permitted discretion in the ordinary course of booking and distributing films in an exchange district when too few prints are available in the exchange for the playing dates

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[2] See footnote 3 to Section IV.

[3] For the purposes of this Section, a special feature means a feature which for a period of time is exhibited at generally advanced first-run admission prices.

[1] See footnote 4 to Section III.

desired by two or more theatres. In such cases this Section shall have no application.

Violations of this Section shall be subject to arbitration and, if the arbitrator finds [2] that the distributor complained against has pursued a policy of withholding available prints from the complaining exhibitor in violation of this Section, [fol. 3458] he shall enter an award directing the distributor to discontinue such policy.

X

A. Controversies arising upon a complaint by an independent exhibitor [1] that a distributor defendant has arbitrarily refused to license its features for exhibition on the run requested by said exhibitor in one of said exhibitor's theatres which was in existence or which replaced [2] a theatre in existence at the date of this decree shall be subject to arbitration.

B. In any such arbitration no award shall be made against a distributor defendant unless the arbitrator shall first find the following facts:

(1) The complainant is an independent exhibitor and the theatre operated by him and specified in his complaint was in existence at the date of the decree or replaced such a theatre; and

(2) Such refusal of the distributor to license its features for exhibition in the complainant's theatre on the run re-

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[2] See footnote 3 to Section IV.

[1] An independent exhibitor, as used in this Section, is one wholly independent of any circuit of more than five theatres and not affiliated either by stock ownership, common ownership, common buying or otherwise with a circuit of more than five theatres and whose licenses are not negotiated by a buying combine or common buying agent negotiating for more than five theatres.

[2] A theatre shall not be deemed to have replaced such an existing theatre unless erected in the same neighborhood as one which was destroyed or permanently abandoned as a theatre, for the purpose of succeeding to its patronage, and with a seating capacity not more than 25 percent greater than that of the theatre replaced.

quested by the complainant continued during a period of not less than three successive months; and

[fol. 3459] (3) The distributor during such period has licensed the features requested by the complainant on the run requested by him to a theatre (sometimes hereinafter referred to as a circuit theatre) which was in competition with the theatre specified in the complaint and which was a component of a circuit of not less than 15 theatres or which was affiliated either by stock ownership, common ownership, common buying or otherwise with a circuit of not less than 15 theatres or the licenses for which were negotiated by a buying combine or common buying agent negotiating for not less than 15 theatres; and

(4) The complainant's theatre has not available to it features sufficient in nature and quantity to enable it to operate on the run requested by the complainant; and

(5) (a) Subsequent to July 20, 1935 and prior to July 20, 1940 the complainant operated the theatre specified in his complaint on the same run as or on an earlier run than that enjoyed by the circuit theatre specified in the complaint; or

(b) Subsequent to July 20, 1940 and during the two consecutive motion picture seasons[3] immediately preceding the filing of the complaint, the complainant operated the theatre specified in his complaint on the same run as or on an earlier run than that enjoyed by the circuit theatre specified in the complaint and during such period exhibited on such run substantially all the features released during such period by the distributor complained against; or

[fol. 3460] (c) Subsequent to July 20, 1935 and prior to July 20, 1940 the complainant demanded in writing[4] features for the theatre specified in his complaint from the distributor complained against on the same run as or on an earlier run than that enjoyed by the circuit theatre specified in the complaint; or the complainant had filed with a Local Clearance and Zoning Board or a Local Grievance Board under

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[3] A motion picture season means the period from September 1 of one year to August 31 of the next year.

[4] Demands in writing shall be deemed to include complaints in writing to the Department of Justice.

the Code of Fair Competition for the Motion Picture Industry approved pursuant to the National Industrial Recovery Act such a complaint which was not finally disposed of by administrative decision under said Code prior to May 27, 1935; or

(d) The complainant operated the theatre specified in his complaint for at least one year prior to the entry of this decree, and subsequent to July 20, 1935 and prior to July 20, 1940 a prior operator of said theatre had demanded in writing [5] features from the distributor complained against on the same run as or on an earlier run than that enjoyed by the circuit theatre specified in the complaint; or the complainant had filed with a Local Clearance and Zoning Board or a Local Grievance Board under the Code of Fair Competition for the Motion Picture Industry approved pursuant to the National Industrial Recovery Act such a complaint which was not finally disposed of by administrative decision under said Code prior to May 27, 1935; and

(6) Such refusal to license the exhibition of said features in the complainant's theatre specified in his complaint was in fact because the theatre licensed to exhibit them on [fol. 3461] the run requested by the complainant was a circuit theatre.

C. In determining whether the exhibitor's complaint is established by the evidence, the arbitrator shall take into consideration, among other things, the following factors and accord to them the importance and weight to which each is entitled, regardless of the order in which they are listed: the terms, if any, offered in respect of each of the two competing theatres; the seating capacity of each of said theatres, the capacity of each for producing revenue for the distributors; the character, appearance and condition of each, including its furnishings, equipment and conveniences; the location of each of said theatres; the character and extent of the area and population each serves; the competitive conditions in the area in which they are located; their com-

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[5] See footnote 4 to this Section.

parative suitability[6] for exhibition of the distributor's features on the run requested; the character and ability of the exhibitor operating each and his reputation generally in the industry and in the community for showmanship, honesty and fair dealing; the policy under which each of the theatres has been operated and the policy under which the complainant proposes to operate his said theatre if he obtains the run requested; the financial responsibility of the exhibitor operating each of said theatres; and the dis-[fol. 3462] tributor's prior relations with each of the two theatres involved and with their owners and operators and any equities arising therefrom.

D. If in any such arbitration the arbitrator finds[7] for the complainant, he may enter an award against the distributor which shall not affect the license to exhibit any feature then under license to the circuit theatre but which shall prohibit such distributor from thereafter licensing its features for exhibition either in the circuit theatre specified in the complaint on the run requested by the complainant, or in the complainant's theatre specified in the complaint, on such run, otherwise then by a separate contract or agreement which shall not be a part of any contract or agreement for the licensing of features for exhibition in any other theatre or conditioned upon the licensing of features for exhibition in any other theatre.

E. After a final award in favor of a complaining exhibitor has been made under this section, such exhibitor may institute a further arbitration proceeding (to be held before the arbitrator who entered the original award if available) upon the ground that such award has not been complied with in good faith by the distributor against which it was entered. If in any such proceeding the arbitrator shall find[7] that the distributor has not complied in good faith with the original award, the arbitrator may award damages to the exhibitor for loss resulting from the distributor's

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[6] considering this factor in situations where the exhibitor customarily exhibits features in two or more theatres on the same run in the same situation as a unit by contracting for groups of features on an "or" basis (i. e., for exhibition at one of two or more specified theatres) all of such theatres may be considered collectively as a unit.

[7] See footnote 3 to Section IV.

failure to comply with the original award but any such award of damages shall be purely compensatory.

[fol. 3463] Any further arbitration proceeding for an award of damages for violation of the original award must be commenced within sixty days after such violation has occurred, by filing a statement specifying the facts constituting each alleged violation for which damages are sought and the exhibitor's alleged damages resulting from each such alleged violation. No award of damages shall be made in any such proceeding for any violation of the original award not occurring within said sixty day period, but prior violations may, in any such proceeding, be considered by the arbitrator as evidence bearing upon the question of the distributor's good faith.

XI

(1) For a period of three years after the entry of the decree herein each of the consenting defendants will notify [1] the Department of Justice immediately of any legally binding commitment for the acquisition by it of any additional theatre or theatres.

(2) During such period each such defendant will also report [1] to the Department of Justice on or before the tenth day of each month the changes in its theatre position, if any, that have occurred during the preceding month, as [fol. 3464] follows, together with a statement of the reasons for such changes:

(a) Theatres contracted to be built, or under construction;

(b) Theatres lost or disposed of;

(c) Theatres acquired;

(d) Interests in theatres acquired, with a statement of the nature and extent of such interests.

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[1] The notification and report shall include such commitments and changes as may have been made by corporations not parties to this decree which are controlled by such defendant. They shall also include such commitments or changes as may have been made by corporations in which such defendant owns a financial interest but which it does not control, if such defendant has received knowledge of such commitments or changes. Each defendant will request such corporations to notify it immediately of any such commitment or change.

(3) If upon receipt of such information the Department of Justice requests any such defendant to furnish further information with respect to any of the above transactions in which it is involved, such defendant will make a reasonable effort to supply such information promptly.

(4) No information furnished under subdivision (1), (2) or (3) hereof shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

(5) For a period of three years following the entry of this decree, no consenting defendant shall enter upon a general program of expanding its theatre holdings. Nothing herein shall prevent any such defendant from acquiring theatres or interests therein to protect its investment or its competitive position or for ordinary purpose of its business. Proceedings based on a violation of this subdivision (5) shall be only by application to the Court for injunctive relief against the consenting defendant complained against, which [fol. 3465] shall be limited to restraining the acquisition, or ordering the divestiture, of the theatres or interests therein, if any, about to be acquired, or acquired, in violation of this Section.

XII

(a) If, prior to June 1, 1942, a decree shall not have been entered against the defendants United Artists Corporation, Universal Corporation and Columbia Pictures Corporation, requiring each of them to trade show its features before licensing the same for exhibition, Section III of this decree, after said date, shall be inoperative and of no binding force and effect upon the consenting defendants, or any of them, except with respect to licenses entered into prior to September 1, 1942, for the exhibition of features released prior to such date and subsequent to August 31, 1941.

(b) If, prior to June 1, 1942, a decree shall not have been entered against the defendants United Artists Corporation, Universal Corporation and Columbia Pictures Corporation, limiting the number of features which may be licensed in a single group, subdivision (a) of Section IV of this decree, after said date, shall be inoperative and of no binding force and effect upon the consenting defendants,

or any of them, except with respect to licenses entered into prior to September 1, 1942, for the exhibition of features released prior to such date and subsequent to August 31, 1941.

(c) If, prior to June 1, 1942, a decree shall have been entered against the defendants United Artists Corporation, Universal Corporation and Columbia Pictures Corporation containing provisions requiring each of them to trade show [fol. 3466] its features before licensing the same for exhibition, any consenting defendant may at any time thereafter file herein a written notice of its election to be relieved from further compliance with Section III of this decree and to comply with said provisions of such decree against said defendants United Artists Corporation, Universal Corporation and Columbia Pictures Corporation, and thereupon an order or supplemental decree shall be entered herein on the application of the defendant or defendants so electing which shall subject said defendant or defendants to such provisions of such other decree and entitle it or them to the benefits of any terms thereof providing for the suspension, modification or vacation of said provisions, and relieve it or them from further compliance with the provisions of Section III of this decree.

(d) If, prior to June 1, 1942, a decree shall have been entered against the defendants United Artists Corporation, Universal Corporation and Columbia Pictures Corporation containing provisions limiting the number of features which may be licensed in a single group, any consenting defendant may at any time thereafter file herein a written notice of its election to be relieved from further compliance with subdivision (a) of Section IV of this decree and to comply with said provisions of such decree against said defendants United Artists Corporation, Universal Corporation and Columbia Pictures Corporation, and thereupon an order or supplemental decree shall be entered herein on the application of the defendant or defendants so electing which shall subject such defendant or defendants to said provisions of such other decree and entitle it or them to the [fol. 3467] benefits of any terms thereof providing for the suspension, modification or vacation of said provisions, and relieve it or them from further compliance with the provisions of subdivision (a) of Section IV of this decree.

(e) If, prior to June 1, 1942, (1) a decree containing the provisions referred to in subdivision (c) hereof, or (2) a decree containing the provisions referred to in subdivision (d) hereof, or (3) a decree containing the provisions referred to in both of said subdivisions, shall have been entered against the defendants United Artists Corporation, Universal Corporation and Columbia Pictures Corporation, but an appeal therefrom has been taken or any of said provisions have not become operative and of full force and effect, then the operation of the provisions dealing with the same subject matter contained in Section III or subdivision (a) of Section IV of this decree shall be suspended and shall be of no binding force and effect upon any consenting defendant except with respect to licenses entered into prior to September 1, 1942, for the exhibition of features released prior to said date and subsequent to August 31, 1941, unless and until such decree shall become final and such provisions shall be in full force and effect against the defendants United Artists Corporation, Universal Corporation and Columbia Pictures Corporation. After such decree shall have become final, any consenting defendant may at any time exercise its right of election provided for in subdivisions (c) and (d) of this Section.

(f) If, at any time, an Act of Congress or a rule or regulation made pursuant to an Act of Congress shall require the trade showing of features before licensing the same [fol. 3468] for exhibition, each of the consenting defendants shall be relieved from further compliance with Section III of this decree, and if, at any time, an Act of Congress or a rule or regulation made pursuant to an Act of Congress shall limit the number of features that may be licensed in a single group, each of the consenting defendants shall be relieved from further compliance with subdivision (a) of Section IV of this decree. In either of such events any consenting defendant may at any time make application to this Court, of which notice shall be served upon Petitioner and all other consenting defendants, for an order relieving the consenting defendants, and each of them, from further compliance with Section III or subdivision (a) of Section IV of this decree, or both, as the case may be, and vacating the same, and thereupon this Court shall make and enter such an order.

(g) At any time after September 1, 1943, any consenting defendant may move to vacate the then effective provisions of Section III and subdivision (a) of Section IV of this decree by filing an application under oath stating that during any consecutive twelve months period preceding the filing of such application either (1) distributors of motion picture films have licensed 25 percent or more of the features released for exhibition in the United States otherwise than in accordance with the then effective provisions of Section III and subdivision (a) of Section IV of this decree [1] or (2) 12½ percent or more of the total gross income from [fol. 3469] licenses for the exhibition of motion pictures in the United States, excluding the gross income of states rights exchanges, has been derived from pictures licensed otherwise than in accordance with the then effective provisions of Section III and subdivision (a) of Section IV of this decree.[1]

Petitioner and all other consenting defendants shall be served with notice of the filing of such application.

Upon such application the Court shall enter an order relieving the defendants from further compliance with the provisions of Section III and subdivision (a) of Section IV of this decree, unless within sixty (60) days after service of such application Petitioner shall establish to the satisfaction of the Court that during said twelve months period less than 12½ percent of the total gross income from licenses for the exhibition of motion pictures in the United States, excluding the gross income of states rights exchanges, had been derived from pictures licensed otherwise than in accordance with the then effective provisions of Section III and subdivision (a) of Section IV of this decree.[2]

(h) At any time after September 1, 1942, any consenting defendant may apply to the Court to vacate the provisions of Section III and subdivision (a) of Section IV of this decree, or the provisions of either of such Sections, and upon such application, the Court shall enter an order relieving the consenting defendants from further compliance with

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[1] Or with corresponding then effective provisions of a decree against the defendants, United Artists Corporation, Universal Corporation and Columbia Pictures Corporation, referred to in subdivisions (c) and (d) of this Section.

[fol. 3470] such provisions, upon such defendant showing to the satisfaction of the Court that, subsequent to said date and by reason of the competition of persons not selling exclusively in accordance with said provisions of said Sections, or of either of them,[2] compliance by the applicant defendant with such provisions of said Sections, or of either of them, has substantially and adversely affected the applicant defendant's business.

XIII

Nothing contained in this decree shall apply to operations or activities of any consenting defendant outside of the continental United States[1] or to operations or activities of any consenting defendant within the continental United States in so far as they relate to the disrtibution or exhibition of motion pictures outside of the continental United States.

XIV

Nothing contained in this decree shall be construed to limit or affect the right of any distributor defendant, prior to the general release of a motion picture, to road show such picture or to license or otherwise arrange for the road showing[1] of such picture upon such terms and conditions as may be fixed by the distributor.

[fol. 3471]

XV

The provisions of this decree shall not apply to any franchise which was signed prior to June 6, 1940, or to any license entered into pursuant to any such franchise, except that Section VIII hereof shall apply to all such franchises and such licenses between parties bound by this decree other than licenses referred to in Section XVII hereof.

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[2] See footnote 1 to this Section.

[1] (Section XIII) The continental United States as used herein means the territory within the boundaries of the forty-eight states and the District of Columbia.

[1] (Section XIV) Road showing is an exhibition at a theatre where a majority of the main floor seats for each evening performance are reserved and sold at an admission price of not less than one dollar.

XVI

No consenting defendant and no officer, director, agent or employee of any such defendant, shall be deemed to have violated any provision of this decree if the arbitration of disputes or controversies arising relative to the subject matter thereof is herein provided for, unless such defendant has refused to arbitrate such a dispute or controversy in the manner and under the conditions specified in this decree and in the Rules of Arbitration and Appeals which are filed herewith, as amended from time to time, or has failed or refused to abide by and perform the final award [1] made and entered in such an arbitration proceeding.

XVII

Nothing contained in this decree shall be construed to limit, impair or restrict in any way whatsoever the right [fol. 3472] of each distributor defendant [1] to license the exhibition, or in any way to arrange or provide for the exhibition in such manner, upon such terms and subjected to such conditions as may be satisfactory to it, of any or of all of the motion pictures which it may at any time distribute (1) in any theatre in the ownership, lease, management or operation, or in the proceeds or profits from the management or operation, of which it directly or indirectly, by stock ownership or otherwise, owns a financial interest at

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[1] (Section XVI) For the purposes of this Section the final award in any arbitration proceeding under Section X of this decree shall be only a final award for damages as therein provided.

[1] (Section XVII) For the purpose of this Section (1) defendant RKO Radio Pictures, Inc., or its successors, shall be deemed to have the same interest in the ownership, lease, management or operation or in the proceeds or profits from the management or operation of any theatre which Radio-Keith-Orpheum Corporation, or its successors, directly or indirectly, has; and (2) defendant Vitagraph, Inc., or its successors, shall be deemed to have the same interest in the ownership, lease, management or operation or in the proceeds or profits from the management or operation of any theatre which Warner Brothers Pictures, Inc., or its successors, directly or indirectly, has.

the time of the entry of this decree and also at the time of such license, and (2) in any theatre in the ownership, lease, management or operation, or in the proceeds or profits from the management or operation, of which such distributor defendant accquires after the date of the decree and owns at the time of such license directly or indirectly by stock ownership or otherwise, a financial interest of not less than 50 per cent and (3) in any theatre in the ownership, lease, management, or operation, or in the proceeds or profits from the management or operation, of which a company in which such defendant owned not less than 42 per cent of the common stock at the date of the decree and at the [fol. 3473] time of such license,[2] acquires after the date of the decree and owns at the time of such license, directly or indirectly, by stock ownership or otherwise, a financial interest of not less than 50 per cent.

XVIII

For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney or the Assistant Attorney General in charge of antitrust matters, and on notice to any consenting defendant, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege, (1) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters

[2] In the case of the distributor defendant Twentieth Century-Fox Film Corporation, or its sucessors, the defendant National Theatres Corporation, or its successors, shall be deemed to be such a company if said distributor defendant owned not less than 42 per cent of its common stock at the date of the decree and not less than 35 per cent of its common stock at the time of such license, provided not less than 42 per cent of its common stock is owned by Twentieth Century-Fox Film Corporation, or its successors, and by present or future officers or directors of National Theatres Corporation, or its successors.

contained in this decree, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which inter-[fol. 3474] view counsel for the officer or employee interviewed and counsel for the company may be present. Without in any way limiting the rights granted in the foregoing provisions of this Section each of the distributor defendants shall keep at its principal office current records, which shall be accessible for the purpose aforesaid, showing——

(1) The dates when and the places where each of its features is trade shown, the names of the trade publications wherein notice of each trade showing was published, and the dates of publication; the name and location (by town and exchange district [1]) of each theatre in which each feature is licensed for exhibition, and the date of license thereof;

(2) As to each license entered into by it, the date thereof and the names and location (by town and exchange district [1]) of the theatres involved, the names of the parties thereto and of the distributor's sales representative who negotiated the license, and the names of the features licensed for exhibition;

(3) All arbitration awards rendered against the distributor with a statement showing what the distributor has done to comply therewith.

Information obtained pursuant to the provisions of this Section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

[fol. 3475] XIX

Except as otherwise expressly and specifically provided in this decree, nothing herein shall be construed to limit the right of any distributor defendant to select its own customers, to bargain with them in accordance with law, or to negotiate with or to license to or to accept any offer from

[1] See footnote 4 of Section III.

any exhibitor to license its motion pictures or any number thereof upon such terms and conditions as it deems advisable or to its best interests.

XX

The provisions of Section III, of subdivision (a) of Section IV, of Section V and of Section X of this decree shall have application only with respect to features released in the United States after August 31, 1941.

XXI

Petitioner, by its counsel, has represented to the Court that the public interest requires that the provisions of this decree shall operate for a trial period of three years from the date of entry hereof. Petitioner has further represented to the Court, and each of the consenting defendants has consented to the entry of this decree upon the condition, that Petitioner will not for a period of three years, after the entry of this decree, either in this action of any other action or proceeding against any such defendant seek either the relief or any thereof prayed in paragraphs (4), (5) and (6) of Section VIII of the Petition filed herein July 20, 1939, or in paragraphs (5), (6) and (7) of Section VIII of the [fol. 3476] Amended and Supplemental Complaint filed herein November 14, 1940, or otherwise seek to divorce the production or distribution of motion pictures from their exhibition; or to dissolve any such defendant or any corporation in which any such defendant has, directly or indirectly, a substantial stock interest and which is engaged in the exhibition of motion pictures or holds directly or indirectly a substantial stock interest in any corporation so engaged, or to dissolve or break up any circuit of theatres of any such defendant or of any such corporation, or to require any such defendant, corporation or circuit to divest itself of its interests or any thereof, direct or indirect, in motion picture theatres in which it had an interest at the date of the entry of this decree.

XXII

1. The method and conditions of and the procedure for the arbitration of claims and controversies hereinbefore provided for in this decree, as well as the arbitration of claims and controversies provided for in any decree refer-

ring to this decree which may be entered by the ...rict Court of the United States for the Northern Dis...t of Illinois, Eastern Division, in an action entitled "United States of America, Petitioner, against Balaban & Katz Corporation, et al., Defendants", modifying a consent decree entered in said action on April 6, 1932 and the arbitration of claims and controversies provided for in any decree referring to this decree which may be entered by the District Court of the United States for the Southern District of California, Central Division, in an action entitled "United [fol. 3477] States of America; Plaintiff, vs. West Coast Theatres, Incorporated, et al., Defendants", modifying a consent decree entered in said action on August 21, 1930, shall be as specified in this Section and in the Rules of Arbitration and Appeals which are provided for hereinafter.

2. An arbitration system for the arbitration of claims and controversies referred to in this decree shall be administered by an impartial Administrator.

The Administrator shall establish and maintain an Arbitration Tribunal in each city in the United States in which three or more of the distributor defendants shall maintain exchanges.

The Administrator shall establish and maintain a panel of not less than ten arbitrators for each Arbitration Tribunal and shall establish and maintain suitable offices and personnel, including a clerk, for each Arbitration Tribunal and for the Appeal Board provided for hereinafter. The Administrator shall have the power to appoint and remove members of the panels and personnel.

3. No person shall be appointed a member of any panel of arbitrators who has any financial interest in, or has or has had any connection with, the production, distribution or exhibition of motion pictures, or has or has had any interest in any motion picture theatre as landlord, lessor, or otherwise.

4. The American Arbitration Association is appointed Administrator of the arbitration system under this decree, and is authorized and directed to perform the duties and functions of such Administrator until further order of the Court.

[fol. 3478] Any successor to the American Arbitration Association as Administrator shall be appointed by the

Court on the joint application and recommendation of the Petitioner and of a majority of the distributor defendants, except that if the Petitioner and a majority of the distributor defendants fail to join in making such application and recommendation the successor Administrator shall be appointed by the Court.

5. There shall be a Budget Committee consisting of three members, one of whom shall be appointed by the Administrator, one of whom shall be appointed by the distributor defendants, and one of whom shall be the Chairman of the Appeal Board. The Budget Committee shall budget the cost of the maintenance and operation of the arbitration system. Such budget for the first twelve months of the operation of the arbitration system shall not exceed four hundred ninety thousand dollars ($490,000.00), except with the consent of a majority of the distributor defendants. The budget for each succeeding twelve months period shall not exceed four hundred sixty-five thousand dollars ($465,000.00), except with the consent of a majority of the distributor defendants, provided, however, that the Court may, on the application of the Petitioner, and for good cause shown, order an increase in the budget for any year in such amount, not exceeding fifty thousand dollars ($50,000.00), as it may find necessary for the effective operation of the arbitration system.

6. Each arbitrator shall be selected and each arbitration proceeding shall be conducted in the manner prescribed by the Rules of Arbitration and Appeals which [fol. 3479] are filed herewith and are hereby approved. Such Rules may be amended or added to from time to time by the Administrator with the approval of a majority of the Appeal Board upon notice to the Petitioner and to the distributor defendants of such proposed amendments or additions and an opportunity for a hearing thereon. No amendment of or addition to such Rules shall change the qualifications of arbitrators as set forth in Rule II of such Rules or deny to any exhibitor or distributor defendant the right to intervene as a party in any proceeding by which it may be affected or deny to any party to an arbitration proceeding the right: to receive notice of all proceedings therein; to participate in the selection of arbitrators; to challenge the qualifica-

tions of arbitrators; to be represented by counsel or otherwise; to secure the production of witnesses and of evidence; to examine and cross-examine all witnesses; and to appeal to the Appeal Board from any adverse award. The Rules may provide for the arbitration of claims and controversies between distributor defendants and exhibitors other than claims or controversies referred to in subdivision 1 of this Section which by agreement between the parties thereto shall be submitted to the tribunals.

7. There shall be an Appeal Board which shall have jurisdiction to determine appeals from awards made by the Arbitration Tribunals. It shall consist of three members appointed by the Court, each of whom shall be a person of known impartiality and distinction. Each such member shall be appointed for a term of three years and shall serve during such term unless he shall be removed [fol. 3480] by order of the Court or shall resign. Each member of the Appeal Board shall be eligible for reappointment.

If any member of the Appeal Board is disqualified from passing upon any appeal, or is temporarily unable because of illness, absence or other cause to act as a member of the Appeal Board, the Court may on application of one or more members of the Appeal Board appoint another person of known impartiality and distinction to act as a temporary member of the Appeal Board in place of the member so disqualified or unable to act. The compensation of such temporary member shall be fixed by the Court.

One member of the Appeal Board shall be designated by the Court as the Chairman of the Board.

The members of the Appeal Board shall be compensated on an annual basis. The Chairman of the Board shall be paid twenty-thousand dollars ($20,000.00) per annum, and each of the other members of the Board shall be paid seventeen thousand five hundred dollars ($17,500.00) per annum.

The Appeal Board shall have its offices in New York, New York.

8. The expenses of the arbitration system shall be paid out of a fund administered by the Administrator. Such fund shall be established and maintained: by filing fees provided for by the Rules of Arbitration and Appeals;

by penalties imposed in accordance with the provisions of Sections IV and V of this decree, and by such additional amounts, to be paid by the distributor defendants, as may be determined by the Budget Committee from time to time [fol. 3481] to be necessary. Such amounts shall be assessed by the Administrator to and shall be paid by the several distributor defendants in amounts proportionate to their respective gross receipts from licenses for the exhibition of motion pictures in the United States. The proportionate gross receipts of such defendants during the 1939-40 motion picture season shall be used in determing the amount to be paid by each such defendant for the expenses of establishing the arbitration system and of maintaining it during the first twelve months of its operation. Thereafter the gross receipts for the motion picture season ending on the August 31st immediately preceding the start of the particular twelve months period shall be used in determining such amounts.

Each distributor defendant shall inform the Administrator promptly after the end of each motion picture season of its total gross receipts during such motion picture season from licenses for the exhibition of motion pictures in the United States. Such information shall be treated by the Administrator as confidential and shall not be divulged except as required by law.

9. Any person who has the right to institute an arbitration proceeding under any provision of this decree or of any other decree referred to in subdivision 1 of this Section may institute and prosecute such proceeding in the manner and subject to the conditions specified in the Rules of Arbitration and Appeals, upon the condition that such person file with the Clerk of the Arbitration Tribunal a submission, in the form and executed in the manner prescribed by the Administrator, which shall provide in [fol. 3482] substance that such complainant submits the controversy to arbitration and undertakes to abide by and to comply fully with whatever final award may be entered therein.

Any exhibitor or distributor who intervenes as a party in any arbitration proceeding as provided in the Rules of Arbitration and Appeals, shall file with the Clerk of the Arbitration Tribunal a submission, in the form and executed in the manner prescribed by the Administrator,

which shall provide, in substance, that such intervenor submits to the arbitration and undertakes to abide by and to accept whatever final award may be entered therein.

Representatives of the Department of Justice, duly authorized in writing, shall be permitted reasonable access during regular office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Appeal Board, of the Arbitration Tribunal, and of the Administrator, which relate to the arbitration system and to the arbitration of claims and controversies under this decree.

XXIII

Jurisdiction of this cause is retained for the purpose of:

(a) Enabling any of the parties to this decree to apply to the Court at any time for such orders and directions as may be necessary or appropriate for the construction or carrying out of this decree, for the enforcement of compliance therewith, and for the punishment of violations thereof;

[fol. 3483] (b) Enabling any of the parties to this decree to apply to the Court at any time for a modification of this decree in order to conform it to any Act of Congress enacted after the entry of this decree;

(c) Enabling any consenting defendant to make any application to the Court referred to in any provision of this decree;

(d) Enabling any of the parties to this decree to apply to the Court at any time more than three years after the date of the entry of this decree for any modification thereof;

(e) Enabling any consenting defendant to apply to the Court at any time more than three years after the date of the entry of this decree, to vacate this decree, or any modification thereof, or to vacate or modify any provision thereof, on the ground that under the economic or competitive conditions existing at the time of such application, this decree or any modification thereof, or any provision thereof, is inappropriate or unnecessary, or oppressive or unduly burdensome, regardless of whether or not such economic or competitive conditions are new or unforeseen. The right of each consenting defendant to make any such

application and to obtain such relief is expressly reserved by them and is hereby expressly granted.

Whenever obligations or prohibitions are imposed upon the defendants by the laws of any State or by rules or regulations made pursuant thereto, with which the defendants by law must comply, the Court, upon application of the defendants, or any of them, shall from time to time enter orders relieving the defendants from compliance with any requirement of this decree in conflict with such laws, [fol. 3484] rules or regulations, and the right of the defendants to make such applications and to obtain such relief is expressly granted.

Any application by any party to this decree under the provisions of this Section shall be made in open court upon notice to all of the other parties to this decree, and each such party, upon such application, shall have the right and privilege of requiring the production of witnesses upon whose testimony such application is sought or opposed, and of examining and cross-examining such witnesses in accordance with the rules of the Court.

Dated November 20th, 1940.

Henry W. Goddard, United States District Judge.

We hereby consent to the entry of the foregoing decree.

For the plaintiff:

(S.) John T. Cahill, United States Attorney; Thurman Arnold, Assistant Attorney General; James V. Hayes, Robert E. Sher, Robert L. Wright, A. H. Feller, Special Assistants to the Attorney General.

[fol. 3485] For the Defendants:

Paramount Pictures, Inc., Paramount Film Distributing Corporation, by (S.) Thomas D. Thacher, Simpson, Thacher & Bartlett, 120 Broadway, New York, N. Y., Their Attorneys.

Loew's, Incorporated, by (S.) John W. Davis, Esq., 15 Broad Street, New York, N. Y.; J. Robert Rubin, Esq., 1540 Broadway, New York, N. Y., Its Attorneys.

Radio-Keith-Orpheum Corporation, RKO Pictures, Inc., RKO Proctor Corporation, RKO Midwest Corporation, by (S.) Wm. J. Donovan, Esq., Dono-

van, Leisure, Newton & Lumbard, 2 Wall Street, New York, N. Y.; William Mallard, Esq., 1270 Sixth Avenue, New York, N. Y.; Ralstone R. Irvine, Esq., 2 Wall Street, New York, N. Y; Otto C. [fol. 3486] Doering, Jr., Esq., 2 Wall Street, New York, N. Y., Their Attorneys.

Keith-Albee-Orpheum Corporation, by (S.) Monroe Goldwater, Esq., Goldwater & Flynn, 60 East 42nd Street, New York, N. Y., Its Attorneys.

Warner Bros. Pictures, Inc., Vitagraph, Inc., Warner Bros. Circuit Management Corporation, by (S.) Hon. Joseph M. Proskauer, 11 Broadway, New York, N. Y., Robert W. Perkins, Esq., 321 West 44th Street, New York, N. Y., Their Attorneys.

Twentieth Century-Fox Film Corporation, National Theatres Corporation, by (S.) Richard E. Dwight, Dwight, Harris, Koegel & Caskey, 100 Broadway, New York, N. Y., Their Attorneys.

[fol. 3487] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

RULES OF ARBITRATION AND APPEALS PURSUANT TO SUB-DIVISION 6 OF SECTION XXII OF THE DECREE IN THE ABOVE ENTITLED ACTION

I. Initiation of arbitration

An arbitration proceeding shall be initiated by filing with the Clerk of the Tribunal having jurisdiction of the controversy a Demand for Arbitration and a submission as provided in subdivision 9 of Section XXII of the [fol. 3488] Decree, and by paying a filing fee of $10.00 to the Clerk of the Tribunal.

Filed herewith and made a part of these Rules is a map[1] showing the territory throughout which each Arbitration Tribunal shall have jurisdiction (each of which territories is hereinafter called an Arbitration District), and the city in each such Arbitration District in which the Arbitration Tribunal shall be located. The Tribu-

[1] Not printed herein.

nal having jurisdiction in a particular proceeding shall be the Tribunal maintained pursuant to Section XXII of the Decree in the Arbitration District in which the complainant's theatre is located, excepted that when a distributor institutes an arbitration proceeding the Tribunal having jurisdiction shall be the Tribunal in the Arbitration District in which the theatre involved is located.

The Demand for Arbitration shall be signed by the complainant and shall set forth:

The name and address of the complaining party; the name and address of each theatre involved in the controversy; the name and address of each exhibitor or distributor against whom complaint is made (hereafter sometimes referred to as a defending party); the name and address of each other exhibitor and distributor whose business or property it is believed by the complainant may be affected by an award in the proceeding; and a brief statement in simple language of the claim and the relief sought.

At the time of filing the Demand the complainant shall deliver to the Clerk of the Tribunal sufficient copies of the Demand to enable the Clerk to deliver one copy to each [fol. 3489] defending party and to each other exhibitor and distributor named in the Demand, and the Clerk shall forthwith make such delivery.

Within seven days after the date on which the Clerk of the Tribunal delivers a copy of the Demand to a defending party, such party may sign and file with the Clerk of the Tribunal a list giving the name and address of each exhibitor or distributor not named in the Demand whose business or property it is believed by such party may be affected by an award in the proceeding.

The Clerk of the Tribunal shall forthwith deliver a copy of the Demand to each exhibitor and distributor named in any list filed by a defending party.

Any exhibitor or distributor named either in the Demand or in any list filed by any defending party and any other exhibitor or distributor whose business or property may be affected by an award in the proceeding may, at any time prior to the commencement of the first hearing, intervene and thereby become a party to the proceeding by filing with the Clerk of the Tribunal a statement which shall set forth his interest as an intervenor in the proceeding and a sub-

mission as provided in subdivision 9 of Section XXII of the Decree and by paying a filing fee of $10.00 to the Clerk of the Tribunal. The Clerk of the Tribunal shall forthwith deliver notice of each intervention to each other party to the proceeding.

Any party who intervenes more than fifteen days after the filing of the Demand shall not be entitled to participate in the selection of the arbitrator.

[fol. 3490] If, at any time after the fifteenth day following the filing of the Demand and prior to the appointment of an arbitrator, all parties to a proceeding who became parties, by intervention or otherwise, on or before said fifteenth day shall by written agreement select another Tribunal as the Tribunal having jurisdiction and file such agreement with the Clerk of the Tribunal originally having jurisdiction, jurisdiction of the proceeding shall thereby be transferred to the Tribunal so selected. Thereafter no further proceedings shall be had in the Tribunal originally having jurisdiction except that the Clerk thereof shall forthwith deliver notice of such transfer to the American Arbitration Association and shall forthwith deliver the entire file in such proceeding to the Clerk of the Tribunal so selected, who shall forthwith take the action prescribed in Rule III for the appointment of an Arbitrator from the Panel of Arbitrators for his Tribunal.

II. Qualifications of arbitrators

No person shall be appointed a member of a Panel of Arbitrators established in accordance with the Decree who has any financial interest in, or has or has had any connection with, the production, distribution or exhibition of motion pictures, or has or has had any interest in any motion picture theatre, as landlord, lessor or otherwise.

No member of a Panel shall serve as an arbitrator in any proceeding if he has or has had any financial or other relations with any party to the proceeding, or has any interest in the result of the proceeding, or has any personal [fol. 3491] bias, which might prejudice the right of any party to a fair and impartial award.

III. Appointment of arbitrators

Not less than fifteen nor more than seventeen days after the filing of the Demand in accordance with Rule

I, the Clerk of the Tribunal shall deliver to each party an identical list of arbitrators selected from the Panel of Arbitrators, for the purpose of enabling the parties to indicate thereon their preference of arbitrators. If the Clerk of the Tribunal does not receive the list from any party within seven days after the delivery of the list to such party, all the names on such list shall be deemed acceptable to such party.

The Clerk of the Tribunal shall forthwith appoint an arbitrator from the names indicated as acceptable to all parties. In the event no name appears from the lists to be acceptable to all parties, or that none of those shown to be acceptable is available, the American Arbitration Association shall appoint an arbitrator from the remaining members of the Panel.

Not less than sixteen days after the filing of the Demand and prior to the appointment of an arbitrator, (or in the case of an arbitration of a controversy under either Section IV or Section VII of the Decree, at any time prior to the appointment of an arbitrator) the parties to any controversy may by written agreement unanimously appoint one or more arbitrators from the Panel of Arbitrators to arbitrate such controversy, by filing such agreement with the Clerk of the Tribunal.

No irregularity in the appointment of an arbitrator [fol. 3492] shall affect the validity of the proceeding or of the award.

Notice of appointment shall forthwith be given to the arbitrator by the Clerk of the Tribunal, and a signed acceptance obtained.

IV. Removal of arbitrator and filling of vacancy

Upon written application of any party prior to the date the arbitrator's award becomes final, the American Arbitration Association shall, upon proof satisfactory to it that an arbitrator is disqualified under Rule II, revoke the appointment of such arbitrator and declare the office vacant and the award, if any, vacated. No such action shall be taken by the American Arbitration Association in any case where an award has been made unless the applicant party shall have given five days notice of its application to all other parties. Unless application for disqualification is made immediately following a party's discovery of the

reason therefor, such party shall be deemed to have waived such disqualification.

The American Arbitration Association also may revoke the appointment of an arbitrator at any time by reason of his neglect, refusal or failure to perform the duties of his office.

If the appointment of an arbitrator is revoked, or if by reason of resignation, death or illness an arbitrator is unable to perform the duties of his office, a new arbitrator shall forthwith be appointed by the Clerk of the Tribunal from among the names acceptable to the parties or by the American Arbitration Association, in accordance with the second paragraph of Rule III.

[fol. 3493] V. Hearings

Hearings shall be held at the office of the Arbitration Tribunal having jurisdiction of the controversy involved or at such other place in the same Arbitration District as may be agreed upon by the parties with the consent of the arbitrator.

Hearings shall commence as promptly as possible after the appointment of the arbitrator.

The arbitrator shall fix the time of the beginning of the hearing and may adjourn the hearing from time to time.

The Clerk of the Tribunal shall deliver to the parties written notice of the name of the arbitrator and of the time and place of the beginning of the hearing at least five days prior thereto, unless such notice is waived by the parties.

VI. Procedure at hearings

The arbitrator shall take the oath of office in the form prescribed by the Administrator before commencing the hearing.

Parties may be represented by counsel or by others.

Each party shall have the right to examine or cross-examine all witnesses.

Witnesses shall testify under oath or its legal equivalent.

Evidence shall be received only at hearings of which all parties shall have had due notice and the arbitrator in making his award shall consider only evidence so received and such inspections as he may make hereunder.

[fol. 3494] The arbitrator shall have power to require any party to produce such records or documents as the arbitra-

tor may deem necessary to a proper determination of the controversy. In lieu of producing or offering original records or documents, any party may, with the approval of the arbitrator, produce or offer sworn copies thereof or sworn excerpts of the relevant or material portions thereof. If any party challenges the authenticity, correctness or adequacy of such documents or excerpts, the arbitrator shall determine such authenticity, correctness or adequacy. All exhibits offered in evidence shall be numbered and so marked as to indicate whether or not they were received.

The arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary.

Whenever the arbitrator deems it necessary he may make an inspection in connection with the subject matter of the controversy upon notice to the parties.

The arbitrator may hear argument and receive briefs.

VII. Closing and reopening the proceeding

After all parties have indicated that they have no further evidence to offer, the arbitrator shall declare the proceeding closed.

Prior to the expiration of the time for making an award the arbitrator may reopen the proceeding upon his own initiative, or for good cause upon the written application of any party on five days' notice to all other parties.

At any time within twenty days after the award has been filed the arbitrator may also reopen the proceeding [fol. 3495] for the purpose of correcting inadvertent errors in the award.

VIII. Defaults and withdrawals

If any party to a proceeding defaults by failure to comply with the fourth paragraph of Rule XI or withdraws from the proceeding after an arbitrator is appointed, the proceeding shall nevertheless continue to an award unless all other parties to the proceeding consent to a dismissal. A party who defaults or withdraws shall not be entitled to participate further in the proceeding but shall be bound by the award.

IX. Powers of arbitrators

The arbitrator shall have the powers and shall perform the duties granted to and imposed upon him by the Decree and these Rules, and in making his award he shall comply with the Decree and these Rules.

X. Awards

The award shall be filed with the Clerk of the Tribunal within thirty days from the date of closing the proceeding, or from the date fixed by the arbitrator for the filing of briefs, whichever is later.

The award shall be specific, shall contain such findings as are required by the Decree and shall be signed by the arbitrator and acknowledged before a notary public or other officer duly authorized to administer oaths.

In his award the arbitrator shall assess costs against the losing party or parties or apportion them among the parties as he may deem proper. Costs shall be limited to the arbitrator's fee and the filing fees.

[fol. 3496] The Clerk of the Tribunal shall forthwith deliver a copy of the award and any corrected award to each party, with the date of filing endorsed thereon.

The award, or, if corrected, the corrected award, shall become final and binding upon the parties upon the expiration of the time for filing a notice of appeal therefrom, unless an appeal is taken in accordance with these Rules.

XI. Arbitrator's fees

The American Arbitration Association shall fix for each Arbitration District the per diem rate of the arbitrator's fee, which in no event shall exceed $50.00 per diem. The arbitrator shall be entitled to the per diem fee for each day or part thereof that he shall attend a hearing or make an inspection.

Any expenses incurred by an arbitrator in making inspections as provided in Rule VI, and in conducting hearings at other places than the Tribunal office as provided in Rule V, shall be borne equally by the parties.

No other compensation or expenses and no gratuities or benefits of any kind shall be paid to or conferred upon an arbitrator by any party.

Prior to the commencement of each day's hearing or inspection, each party to the proceeding shall deposit with the

Clerk of the Tribunal a sum equal to the arbitrator's per diem fee. Failure to make such deposit shall constitute a default.

After the award is filed, the arbitrator shall be paid his fee out of the sums deposited by the parties to the proceeding. The Clerk of the Tribunal shall return any undis- [fol. 3497] bursed sums to the parties entitled thereto upon the final disposition of the controversy.

XII. Stenographic Cost [1]

The Clerk of the Tribunal shall make the necessary arrangements for the taking of a stenographic record of the testimony when such a record is requested by one or more of the parties, who shall deposit the cost thereof with the Clerk of the Tribunal.

Any party desiring a transcript of the stenographic record of the hearing shall pay the cost thereof and in the event that such party did not pay the cost of taking the stenographic record it shall reimburse the other party or parties for the cost thereof.

XIII. Extensions of Time

The parties may in writing unanimously agree to extend the time specified in any of the foregoing Rules and, except as to Rule X, the arbitrator may extend such time upon the written application of any party upon five days notice to all other parties.

XIV. Notice of Appeal

Any party to a proceeding may apeal from an award by filing a notice of appeal with, and paying a filing fee of $25.00 to, the Clerk of the Tribunal in which the award was made, not later than twenty days after the date of filing of the award or the corrected award. The Clerk of the Tribunal shall forthwith deliver a copy of the notice of appeal with [fol. 3498] the date of filing endorsed thereon to each party to the proceeding and to the Clerk of the Appeal Board.

The appellant shall have made at his own expense, and, within ten days after filing the notice of appeal, shall file with the Clerk of the Tribunal in which the award was

[1] Under Rule XIV no appeal can be taken unless three copies of the transcript of the record or an abbreviation thereof are filed with the Clerk of the Tribunal.

made, three copies of the transcript of the stenographic record of the hearing or such abbreviation thereof as may be agreed upon by the parties.

XV. Record on Appeal

Upon receipt of the three copies of the transcript or an agreed abbreviation thereof filed by the appellant, the Clerk of the Tribunal shall forthwith prepare the record on appeal which shall consist of the following:

1. The Demand for Arbitration and the submission.

2. Statements and submissions of intervening parties.

3. Notice of appointment and signed acceptance of the arbitrator.

4. Clerk's record of hearing.

5. Three copies of the transcript of the stenographic record of hearing or such abbreviation thereof as may have been agreed upon by the parties.

6. Exhibits received in evidence and exhibits offered but not received in evidence, except such as may be omitted by stipulation of the parties.

7. The award.

Unless otherwise directed by the Appeal Board, the record on appeal shall remain on file in the Tribunal until the expiration of the time for filing of all briefs as provided in Rule XVI.

[fol. 3499] Immediately upon the expiration of such time the Clerk of the Tribunal shall transmit the record on appeal to the Clerk of the Appeal Board.

XVI. Proceedings on Appeal

Within thirty days after the filing of the notice of appeal, each party shall deliver a copy of his brief on appeal to every other party and file with the Clerk of the Appeal Board six copies of such brief with proof of delivery of a copy thereof to each other party.

Within forty days after the filing of the notice of appeal, each party shall deliver a copy of any answering brief to each other party and file with the Clerk of the Appeal Board six copies of such brief with proof of delivery of a copy thereof to each other party.

Upon the written agreement of all parties the Appeal Board shall, and upon its own initiative may, order oral argument. At any time not later than five days after the expiration of the time for filing answering briefs any party may apply to the Appeal Board for permission to present oral argument. Such application shall be in writing, shall state the reasons therefor and shall be filed with the Clerk of the Appeal Board, together with proof of delivery of a copy thereof to each other party. Any objection to such application shall be made in writing and filed with the Clerk of the Appeal Board, together with proof of delivery of a copy thereof to each other party, within five days after the filing of the application. The ruling on such application shall be made by the Appeal Board forthwith after the expiration of the five day period allowed for the filing of objec- [fol. 3500] tions and a copy of the ruling shall forthwith be delivered by the Clerk of the Appeal Board to all parties.

When the Appeal Board has ordered oral argument it shall fix the date thereof. The Clerk of the Appeal Board shall deliver to the parties notice in writing of the time and place of such argument, at least ten days prior thereto.

Oral arguments shall be heard by the Appeal Board only in New York, New York.

XVII. Decision and Opinion of the Appeal Board

All members of the Appeal Board shall pass on all appeals and, except as provided in Rule XIX, on all other matters, and the concurrence of two shall be necessary to a decision.

The decision of the Appeal Board together with an opinion stating the reasons therefor shall be in writing and signed by the members of the Appeal Board or a majority thereof. The decision shall be acknowledged before a notary public or other officer duly authorized to administer oaths. The decision and opinion shall be filed with the Clerk of the Appeal Board, who shall forthwith file a copy thereof with the Clerk of the Tribunal and shall forthwith deliver a copy thereof to each of the parties. The Clerk of the Tribunal shall forthwith notify each of the parties of the date of filing with him.

The Appeal Board in its decision may affirm, modify, correct or reverse the award of the arbitrator, including provision for costs therein, or may remand the proceed-

[fol. 3501] ing to the Tribunal for a rehearing or for further action in accordance with the decision of the Appeal Board.

The Appeal Board in its decision may assess the cost of the stenographic record and of the transcript thereof against the losing party or parties, or apportion it among the parties as it deems proper.

XVIII. Proceedings Subsequent to Decision of Appeal Board

Unless the Appeal Board remands the proceeding to the Tribunal or reopens the proceeding as hereinafter provided, the decision of the Appeal Board shall become the final award and shall become binding on all parties ten days after it is filed with the Clerk of the Tribunal.

When the Appeal Board remands a proceeding the arbitration shall thereupon proceed in accordance with the decision of the Appeal Board.

Within ten days after the decision of the Appeal Board has been filed with the Clerk of the Tribunal the Appeal Board may reopen the proceeding for the purpose of correcting inadvertent errors. In such case the corrected decision shall be signed and acknowledged and copies thereof shall be delivered and filed as provided in Rule XVII. Such corrected decision, unless it remands the proceeding to the Tribunal, shall become the final award and shall become binding on all parties when it is filed with the Clerk of the Tribunal, or ten days after the decision corrected thereby was filed with the Clerk of the Tribunal, whichever is later.

XIX. Extension of Time

The parties may by written agreement extend the time specified in any of the Rules relating to appeals, and any [fol. 3502] member of the Appeal Board may do so upon the written application of any party made upon five days notice to all other parties.

XX. Submission of Other Controversies

Controversies between exhibitors and distributors other than those referred to in subdivision 1 of Section XXII of the Decree may be submitted to the arbitration system by the parties thereto, provided:

a) At least one of the parties thereto is a distributor defendant as defined in the Decree; and

b) A submission in writing setting forth the controversy to be arbitrated is signed by all the parties thereto and filed with the Clerk of the Tribunal having jurisdiction.

These Rules in so far as they are applicable shall apply to the arbitration of such controversies except as the submission may otherwise provide and except that no exhibitor or distributor may intervene therein.

XXI. Access to Records

At no time shall access to the record of any proceeding or appeal be permitted to any person not a party, except that awards, decisions and opinions may be made public.

XXII. Definitions

"Decree" means the Consent Decree dated November 20, 1940 entered in the District Court of the United States for the Southern District of New York in an action entitled "United States of America v. Paramount Pictures, Inc., et al."

[fol. 3503] "Arbitration Tribunal" and "Tribunal" mean the Tribunal established by the American Arbitration Association in any city as provided in the Decree.

"Clerk of the Tribunal" means the Clerk of the Arbitration Tribunal having jurisdiction.

"File with the Clerk" means actual receipt by the Clerk.

"Deliver" or "Delivery" means either personal delivery or the placing of the document in the mails properly stamped and addressed to the person intended to receive such document.

"Proof of Delivery" means an admission of delivery or an affidavit of personal delivery or of mailing.

"Award" means award and findings.

"Person" means any individual, partnership, unincorporated association or corporation.

The above Rules of Arbitration and Appeals are hereby approved.

November 20th, 1940.

(S.) Henry W. Goddard, United States District Judge.

Filed Nov. 20, 1940.

[fol. 3504] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

APPLICATION FOR MODIFICATION OF DECREE—Filed August 7, 1944

The United States of America, plaintiff herein, hereby applies to the court for modification of the consent decree heretofore entered herein on November 20, 1940, pursuant to section XXIII thereof, in the manner hereinafter set forth for the reasons set forth in paragraph 1 hereof.

1. Sections III and IV (a) of said decree have been inoperative since September 1, 1942, and the restraining provisions of Section XI of said decree have been inoperative since November 20, 1943. Said decree is now inadequate to perform its intended function of restraining the violations of law alleged in the complaint and conforming the operation of the decree defendants [1] to the requirements of the Sherman Act. Plaintiff respectfully submits that in order to perform said function said decree should be modified in the respects set forth in the following paragraphs. Where no mention is made of an existing section, no change is requested. As to section III, no change in the form thereof is requested but plaintiff prays that said section may again be made operative.

2. Plaintiff prays that subsection (a) of section IV of the decree be stricken therefrom and that the following subsection (a) be substituted therefor:

> [fol. 3505] No distributor defendant shall condition the licensing of one feature or group of features upon the licensing of another feature or group of features.

Plaintiff further prays that the last two paragraphs of subsection (b) of section IV, which appears on pages 6 and 7 of the decree, be sticken therefrom. Said section IV, if modified as prayed herein, would read as follows:

> (a) No distributor defendant shall condition the licensing of one feature or group of features upon the licensing of another feature or group of features.

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[1] The term "decree defendants" as used herein refers to all of the parties which consented to the decree entered herein on November 20, 1943.

(b) No distributor defendant shall require an exhibitor to license short subjects, newsreels, trailers, or serials (hereinafter collectively referred to as shorts) as a condition of licensing features. No distributor defendant shall require an exhibitor to license reissues, westerns,[1] or foreigns[2] (hereinafter collectively referred to as foreigns) as a condition of licensing other features.

3. Plaintiff prays that section V of the decree be stricken therefrom and that the following section V be substituted therefor:

(a) No decree defendant shall condition the licensing of films in one theatre or group of theatres upon the licensing of films in another theatre or group of theatres.

4. Plaintiff prays that section VIII of the decree be modified by striking therefrom the sentence, "It is recognized that clearance, reasonable as to time and area, is essential in the distribution and exhibition of motion pictures" and substitute therefor the following sentence: "Clearance shall be deemed to be unreasonable whenever its effect is to restrain competition between two or more theatres unreasonably."; by adding the following clause to the provisions [fol. 3506] defining the power of the arbitrator: "An award providing that a theatre holding clearance found to be unreasonable should take no clearance over the complainant's theatre may be made regardless of whether or not there is substantial competition between said theatres."; and by striking the following two provisions:

Subject to the provisions of Section XVII hereof, the award may fix such maximum clearance under any then existing franchise or any license entered into pur-

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[1] Westerns are those western pictures which are not of the usual character and type of, and are inexpensively produced as compared with, the distributor's general line of features.

[2] Foreigns are features produced outside of the United States except such as are produced in the English language by the distributor or a subsidiary or affiliate thereof.

suant to such franchise between such distributor defendant and any other party bound by this decree.

Nothing contained in this Section shall be deemed to restrict, and no award made in any arbitration under this Section shall restrict, the exhibitor's right to license for any theatre any run which he is able to negotiate with any distributor, nor the distributor's right to license for any theatre any run which it desires to grant.

Said section VIII, if modified as prayed herein, would read as follows:

Controversies arising upon the complaint of an exhibitor that the clearance applicable to his theatre is unreasonable shall be subject to arbitration under the following provisions:

Clearance shall be deemed to be unreasonable whenever its effect is to restrain competition between two or more theatres unreasonably.

In determining whether any clearance complained of is unreasonable, the arbitrator shall take into consideration the following factors and accord to them the importance and weight to which each is entitled, regardless of the order in which they are listed:

(1) The historical development of clearance in the particular area wherein the theatres involved are located;

(2) The admission prices of the theatres involved;

(3) The character and location of the theatres involved, including size, type of entertainment, appointments, transit facilities, etc.;

(4) The policy of operation of the theatres involved, such as the showing of double features, gift nights, giveaways, premiums, cut rate tickets, lotteries, etc.;

(5) The rental terms and license fees paid by the theatres involved and the revenues derived by the distributor defendant from such theatres;

(6) The extent to which the theatres involved compete with each other for patronage; and

[fol. 3507] (7) All other business considerations, except that the arbitrator shall disregard the fact that a

theatre involved is affiliated with a distributor or with a circuit of theatres.

The power of the arbitrator in deciding any such controversy shall be limited to making (1) a finding as to whether or not the clearance complained of is unreasonable; and, if the finding be in the affirmative, (2) an award fixing the maximum clearance between the theatres involved which may be granted in licenses thereafter entered into by the distributor defendant which is a party to the arbitration. An award providing that a theatre holding clearance found to be unreasonable should take no clearance over the complainant's theatre may be made regardless of whether or not there is substantial competition between said theatres.

Any distributor defendant or any exhibitor affected by such an award may institute a further arbitration proceeding for a modification thereof upon the ground that since the making of the award the conditions with respect to the theatres involved therein have so changed as to warrant modification, and, in the event that the arbitrator finds that there has been such change, he shall make a redetermination of the maximum clearance.

Nothing contained in this Section and no award hereafter entered in any arbitration in accordance with its provisions shall apply to licensing the exhibition of any special feature, provided such special feature is licensed under an exhibition contract applicable only thereto, or to the right of a distributor defendant to include in such contract and to make a part thereof such special terms and conditions, including such special clearance provision or provisions, as such distributor shall fix, establish and enforce for and in connection with the exhibition of such special feature.

5. Plaintiff prays that sections IX and X of the decree be stricken therefrom and that the following section be substituted therefor.

No distributor defendant shall license or make available for exhibition in theatres any films released by it upon terms which have the effect of unreasonably restraining competition between two or more theatres

in exhibiting said films. Controversies arising on a complaint by an exhibitor thereby affected that a distributor has so licensed or made available such films for exhibition in the complainant's theatre or in a theatre competing with his theatre shall be subject to arbitration in accordance with the terms of this decree. If the arbitrator finds that this section has been so violated, [fol. 3508] he shall make an award which will describe the specific course of conduct found by him to violate this section and will require the payment of an amount by such defendant or defendants as he finds have engaged in such conduct which in his judgment will compensate the complainant for any pecuniary loss sustained as the result of such a violation or violations and discourage the recurrence of such violations.

6. Plaintiff prays that section XI of said decree be stricken therefrom and that the following section be substituted therefor:

(a) No decree defendant shall hereafter acquire, directly or indirectly, any financial interest in any theatre.

(b) Each decree defendant which is directly or indirectly engaged in the production, distribution and exhibition of films shall within three years from the date of this modification completely divorce its exhibition business from its production and distribution business to the end that no defendant directly or indirectly engaged in producing or distributing films shall then own any financial interest in theatres and no defendant directly or indirectly engaged in operating theatres shall then own any interest in the production or distribution of films.

(c) Each decree defendant directly or indirectly engaged in operating theatres shall within such time and upon such terms as the court may deem reasonable divest itself of such theatre interests as the court may in the course of supplemental proceedings hereunder, find should be divested in order to insure theatre operating competition in the communities where they are now monopolizing theatre operation.

(d) All of the theatre-operating agreements, implied or expressed, by which any two or more of the

[fol. 3509] decree defendants share in the financial benefits from the operation of theatres jointly owned or controlled by any two or more of them are hereby declared void, and each decree defendant is enjoined from entering into or enforcing any similar agreements.

7. Plaintiff prays that section XII of the decree may be stricken therefrom.

8. Plaintiff prays that section XV of the decree may be stricken therefrom and that the following section be substituted therefor:

> All franchise and any licenses entered into pursuant thereto by any of the decree defendants are hereby declared illegal and void and the said defendants are hereby enjoined from making or enforcing any similar agreements.

9. Plaintiff prays that section XVII of the decree may be stricken therefrom and that the following section be substituted therefor:

> No distributor defendant shall license its films to any affiliated theatre upon terms which unreasonably restrain the ability of an unaffiliated theatre to compete with such affiliated theatre.[1]

10. Plaintiff prays that section XX of the decree may be stricken therefrom.

11. Plaintiff prays that section XXI of the decree may be stricken therefrom.

Attached hereto is a copy of the proposed modified decree with the sections thereof renumbered to conform to the omissions proposed herein.

United States of America, by Robert L. Wright, Special Assistant to the Attorney General. Francis [fol. 3510] Biddle, Attorney General. Wendell Berge, Assistant Attorney General. James B. M. McNally, United States Attorney.

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[1] For the purposes of this section an affiliated theatre is one in which a distributor defendant owns, directly or indirectly, a financial interest. All other theatres are unaffiliated.

[fol. 3511] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

Notice of and Memorandum in Support of Plaintiff's Motion for Temporary Relief With Respect to Unreasonable Clearance—Filed February 5, 1945

[fol. 3512] NOTICE OF MOTION

To:

Simpson, Thacher & Bartlett, Esqrs., 120 Broadway, New York City, Attorneys for Paramount Pictures, Inc. and Paramount Film Distributing Corporation.

John W. Davis, Esq., 15 Broad Street, New York City, Attorney for Loew's, Incorporated.

Donovan, Leisure, Newton & Lumbard, Esqrs., 2 Wall Street, New York City, Attorneys for Radio-Keith-Orpheum Corporation, RKO Pictures, Inc., RKO Proctor Corporation, RKO Midwest Corporation, and Keith-Albee-Orpheum Corporation.

Joseph M. Proskauer, Esq., 11 Broadway, New York City, Attorney for Warner Bros. Pictures, Inc., Vitograph, Inc., and Warner Bros. Circuit Management Corporation.

Dwight, Harris, Koegel & Caskey, Esqrs., 100 Broadway, New York City, Attorneys for Twentieth Century-Fox Film Corporation and National Theatres Corporation.

Schwartz & Frohlich, 1450 Broadway, New York City, Attorneys for Columbia Pictures Corporation, Screen Gems, Inc., and Columbia Pictures of Louisiana, Inc.

O'Brien, Driscoll & Raftery, 152 W. 42d Street, New York City, Attorneys for United Artists Corporation.

[fol. 3513] Charles D. Prutzman, Adolph Schimmel, 1250 6th Avenue, New York City, Attorneys for Universal Corporation, Universal Pictures Company, Universal Film Exchange, Inc., and Big U. Film Exchange, Inc.

GENTLEMEN:

Please Take Notice that upon the pleadings in the above-entitled case, the defendants' answers to plaintiffs' written interrogatories heretofore filed herein, the decisions numbered 1 to 104, inclusive, rendered by the Appeal Board appointed by the Court, in the course of arbitration proceedings under the consent decree heretofore entered herein, and

the memorandum attached hereto and made a part hereof, counsel for plaintiff will appear before the Honorable Henry W. Goddard, in the courtroom usually occupied by him in the Federal courthouse for the Southern District at Foley Square, in the City of New York, on the fifth day of March 1945, at 10 o'clock in the forenoon, and move the Court for the entry of an order enjoining the defendants Loew's, Incorporated, Paramount Pictures, Inc., R.K.O. Radio Pictures, Inc., Twentieth Century-Fox Film Corporation, and Warner Bros. Pictures, Inc., the corporations respectively controlled by them and their officers, agents, and employees from granting unreasonable clearance in licensing for exhibition in theaters feature films distributed by them, pending the entry of a final decree herein, and for such other and further relief as to the Court may seem just in the premises.

Wendell Berge, Assistant Attorney General.

Dated February 5, 1945. Washington, D. C.

[fol. 3514] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RELIEF WITH RESPECT TO UNREASONABLE CLEARANCE

I. Prior Proceedings

On August 7, 1944, plaintiff filed its application for modification of the consent decree of November 20, 1940, setting forth in detail modifications which it deemed essential to make that decree adequate to perform its function of restraining violations of law by the consenting defendants. The arbitration provisions of that decree have continued to remain in effect by agreement of the parties since the expiration of the three-year trial period on November 20, 1943, but since the defendants have declined to concede expressly the existence of law violations, even for the purpose of determining the proper scope of temporary relief, the plaintiff is remitted to a trial of the suit on the merits for any permanent relief and to such additional temporary relief as the Court may grant on a motion therefor. As no trial on the merits was imminent and the violations which

led to the entry of the decree continued, the plaintiff moved orally on December 20, 1944, for temporary relief pending the entry of a final judgment. On that date, March 5, 1945, was set as the date on which plaintiff's motion for temporary relief against the consenting defendants with respect [fol. 3515] to unreasonable clearance would be heard and written notice of motion for such relief is attached hereto and served herewith.

As stated by plaintiff's counsel on December 20, the Government will not offer oral testimony in support of this motion but will rely principally upon a consideration by the Court of facts which have been established in the course of the arbitration proceedings under Section VIII of the decree, the section which deals with unreasonable clearance. The purpose of this memorandum is to advise the defendants of the particular arbitration decisions on which the plaintiff will rely at the hearing, as directed by the Court, and to apprise them of the particular relief which will then be sought. It is our understanding that we shall be advised by February 20 of their position with respect to the relief sought, and particularly as to what, if any, testimony they will seek to introduce at the hearing.

II. Plaintiff's Theory of the Motion

In the absence of express agreement between the plaintiff and the defendants as to either the necessity for injunctive relief or its form, plaintiff is now proceeding upon the assumption that its case for additional temporary relief requires a showing to the effect that (1) the consenting defendants have, since the suit was filed, imposed unreasonable clearances which, *prima facie*, violate the Sherman Act, and (2) the decree in its present form fails to give adequate temporary relief against such violations. Upon such a showing, we think it is clear that relief additional to that provided by the present Section VIII should be granted, pending the entry of a final decree. As the use of the arbitration system as a mechanism for enforcement of any provision of the decree is dependent upon an agreement of the parties, the provisions that we propose for the purpose of this hearing would normally be enforced by contempt proceedings. Although the issue to be decided here is thus what the substantive provisions of the temporary decree shall be which deal with unreasonable clearance, the

[fol. 3516] parties will be free, in any event, to agree to implement whatever substantive provision the Court adjudge the plaintiff to be entitled to by the existing arbitration system, or such other enforcement mechanism as the Court may approve.

III. What Unreasonable Clearance Is Under the Decree and Under the Sherman Act

Clearance, as defined in the consent decree, is "the period of time, fixed by agreement between a distributor and an exhibitor, prior to the expiration of which a feature licensed for prior exhibition in a theatre may not be exhibited in another theatre or theatres." Such an agreement obviously restricts the ability of one theatre to compete with another in licensing, booking and exhibiting a particular distributor's films. As the agreement is one which restrains interstate commerce in films it is a violation of Section 1 of the Sherman Act unless the restraint is a *reasonable one. Interstate Circuit* v. *United States*, 306 U. S. 209.

Clearance restrictions have traditionally been imposed by distributors in this industry on the theory that their ownership of copyrights on the films distributed entitled them to impose such restrictions on the exhibition of the films in theatres as are necessary and appropriate to realize maximum revenue from the exploitation of the copyright. Upon this theory distributors have customarily undertaken to fix the minimum admission prices at which their films should be exhibited to the public in all of the theatres they license and maintenance of these minimum prices is made a condition of the enjoyment of such run (priority of exhibition in a particular competitive area) and clearance privileges as the license grants.[1] Such a use of run, clearance and admission price restrictions is keyed to the existing [fol. 3517] system of distribution, which involves the playing of the same film on successive runs in various theatres in the same competitive area at successively reduced admission prices. Obviously the first-run exhibitors would not ordinarily be expected to pay film rentals based upon

[1] The form in which these provisions are cast in the printed license agreements respectively employed by the five consenting defendants is set forth in the Appendix to this memorandum.

the receipt of the highest admission price in a competitive area unless there were some assurance that the films they exhibited would not be exhibited elsewhere in the area at substantially lower prices until after the lapse of some reasonable period of time. Nevertheless, even such price-fixing has been held to be illegal when used to protect a theatre operating monopoly from independent competition by destroying an existing price differential between subsequent runs in the same city. *Interstate Circuit* v. *United States*, 306. U. S. 209.

As the minimum admission price fixed in the film license is not a price paid for the privilege of vending, performing or reproducing the copyrighted film, such a price restriction does not appear to be a *bona fide* exercise of any of the exclusive privileges granted by the copyright laws under any circumstances. The price paid for such a privilege is the sum paid by the exhibitor to the distributor for the use of the film in his theatre, designated in the license as film rental. Whether this sum is stated as a flat figure or a percentage of the gross receipts, it will vary with the ability of the film to attract patrons to the theatre and the distributor thus had a financial stake in the exhibitor's admission prices, which determine the extent and value of that patronage. However, this kind of stake in the price at which a product is ultimately merchandised does not permit an interstate distributor of the product to fix the price at which others will vend it to the public. Such price-fixing violates the Sherman Act. *Dr. Miles Medical Co.* v. *John D. Park & Sons*, 220 U. S. 373.

Such price-fixing is also outside the protection of the copyright laws where the product is copyrighted *(Bobbs-Merrill Co.* v. *Straus*, 210 U. S. 339) and outside the protection of the patent laws where it is patented *(Straus* v. *Victor* [fol. 3518] *Talking Machine Co.*, 243 U. S. 490) although a patentee has been held to possess the right to fix the price at which its own product is to be sold by its agents and it imposes a similar requirement on a manufacturing license. *General Electric Co.* v. *United States*, 272 U. S. 446.

A film distributor does not sell its film to exhibitors but merely grants the exhibitor a license to use a positive print of its film for commercial exhibition in his theatre for a specified period of time. The exhibitor does not sublicense the film but sells to his patrons the right to witness a performance in his theatre of which the exhibition of a single

feature film may be only a part. The exhibitor, who possesses the theatre, determines the program of entertainment to be offered and collects the admission fees which make the exhibition of the film profitable; would normally determine independently the price at which that entertainment should be made available to the public. There appears to be no sound legal reason for permitting any of the persons who do not make the ultimate sale to the public, but merely contribute to the production of entertainment created by the combined use of a theatre investment, copyrighted film, patented equipment and various special skills, to fix the price to the public in contracts made with the exhibitor covering the use of their respective contributions.[2]

[fol. 3519] The monopolistic consequences of permitting these defendants to use their copyrights to fix admission prices and impose other restrictions on theatre operating competition are apparent when the prior use of patent rights to dominate the industry is considered. In 1915 a decree was entered in *United States* v. *Motion Picture Patents Co.*, 225 Fed. 800 dissolving a combination of film distributors and projection equipment manufacturers which had effectively monopolized the motion picture business in this country as it then existed by the use of patent licensing restrictions. One form of these restrictions was the tying of the use of essential patented projection equipment controlled by the combination to the use of films distributed by

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[2] The film rental terms, of course, determine how much of the admission price stays with the owner of the theatre and how much goes to the distributor for his share in producing the entertainment sold. How much of these respective shares are further distributed by the theatre owner to those who supply him with the patented equipment that he employs in the course of the performance and by the distributor to those who created the copyrighted film, of course, depends upon such contractual arrangements as the exhibitor and distributor respectively make with others. But it seems clear that neither the ownership of a patent nor a copyright on any feature of the entertainment gives such owner any legal right to restrict the terms on which that entertainment is sold by others no matter how desirable such restrictions may be from the standpoint of the patent or copyright owner.

them, which was declared to be outside the scope of the patent laws in *Motion Picture Patents Co.* v. *Universal Film Co.*, 273 U. S. 502. The problem with which we are immediately concerned on this motion is the extent to which five theatre-owning distributors may restrict the terms on which their films are made available to competitive theatres by license agreements made with their theatres and theatres unaffiliated with them. If no limitation is placed on the use of such restrictions it is self-evident that they will be used to promote the business of these distributors, their theatre affiliates and other theatre circuits with large film buying power at the expense of the small independent theatre operators.[3]

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[3] Monograph 43 of the TNEC states, at pp. 40-45:

"Powerful exhibition interests competing with weaker rivals have demanded extended clearance periods from distributors, and have insisted that they be granted protection over geographical areas larger than could be warranted in any economic sense. In view of the larger aggregate rentals paid by these dominating exhibition units as compared with their smaller competitors, and the fear that these rentals might be reduced or withdrawn, distributors in many cases have acquiesced to these demands.

The primary reason for the negotiation of extended protection has been, of course, the simple desire to hear the cheery ring of the bell in the cash register. A theatre able to negotiate extended clearance without being required to pay correspondingly higher rentals tends to draw patronage away from competing subsequent-run exhibitors. That this practice may render the competitor's business wholly unprofitable may not be an undesirable aspect of the situation. If the large exhibitor is able to acquire cheaply the properties of his competitors, he may achieve a local monopoly of the exhibition field. In this case the admission prices and clearance periods which are established will be designed solely to enhance his profits at the expense of all motion picture patrons in the locality, so far as this may be permitted by the distributors.

The consumer interest in unfair clearance is quite clear. The consumer desires to see each picture as promptly as possible and at the lowest admission price compatible with continued desirable service. It is quite evident that unfair clearance, whether present as such or carried through to

[fol. 3520] In partial recognition of the foregoing facts, the system of clearance arbitration provided by Section VIII of the decree was established in the hope that it would afford substantial relief for exhibitors suffering from unreasonable clearances imposed by the five theatre-owning distributors and that such relief would benefit the public. The decree was set up on a temporary basis for a three-year trial period in order that it might be modified in the light of experience gained during that period and its arbitration provisions have been continued in effect since November 20, 1943, by agreement of the parties, pending a judicial determination of such additional relief as the law may warrant.

Section VIII provides that upon the complaint of an exhibitor subject to the clearance complained of an arbitration may be had in which the reasonableness of the clearance is determined and an award may be made which limits the clearance that may be imposed upon him in future licenses. The award is made subject to modification upon rearbitration in the light of such changes in conditions occurring subsequent to the award as may warrant such relief. An appeal [fol. 3521] as of right from all such awards to a three-man board appointed by this Court is provided by the Rules of Arbitration. The Appeal Board, on such appeals, reviews the entire record made before the arbitrator, *de novo*.

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the ultimate objective of a local monopoly, directly contravenes the interests of the consumer.

Unfair clearance is not primarily a question of producer-distributor control of exhibition. It has been employed repeatedly by large independent theatre organizations. Nevertheless, the practice has been closely identified with the theatre operations of the major companies. As has been already indicated, the five major companies control and operate a great number of large prior-run theatres throughout the United States. Since unfair clearance is most usually instituted by such theatres over subsequent-run competitors, this control is most significant. Moreover, since these major companies in general do not compete with each other in their theatre operation activities, the mutual advantages to be derived from reciprocal permission to enforce unfair protection terms on subsequent-run exhibitors must not be disregarded.

IV. The Defendants Have Repeatedly Granted Unreasonable Clearance Since This Suit Was Filed

In demonstrating that the consenting defendants have granted unreasonable clearance, in violation of the Act, during the pendency of the suit, we shall rely only upon those arbitration proceedings in which clearance imposed by one or more of these defendants was found by the Appeal Board to be unreasonable. As each of the defendants respectively involved in each case was a party to these proceedings in which the facts were carefully reviewed by an able board appointed by the Court for that purpose, we think that the facts found by them bind the defendants for the purpose of this proceeding, although the legal conclusions to be drawn from these facts are, of course, for this Court to determine.

The only standard set up by the decree for determining the reasonableness of clearance was a declaration that "clearance, reasonable as to time and area, is essential in the distribution and exhibition of motion pictures" and an enumeration of seven factors to be considered by the arbitrator which may be summarized as follows: (1) historical development, (2) admission prices, (3) general character of the theatres, (4) their policies of operation, (5) film rentals, (6) extent of competition for patronage, and (7) general business considerations, excepting circuit and distributor affiliations. The relief granted was limited to a finding that the clearance complained of was unreasonable, and the only award that may be made is one fixing the *maximum* clearance which may be granted in future licenses. Clearance granted by one of these defendants in favor of its own theatres was expressly exempted from any relief as were existing license agreements made by them except those made with each other pursuant to franchises with each other. Licenses for the exhibition of special features to be shown at advanced admission prices are also exempt from the [fol. 3522] operation of the provision. The decree also provided that this relief should in no way restrict the rights of exhibitors and distributors to negotiate for or license any run that the distributors desired to grant. The relief available consists solely of a finding that the clearance complained of is in fact unreasonable plus a declaration of the maximum amount of clearance that may thereafter be imposed in favor of the theatres enjoying the unreasonable clearance. Violation of an award is punishable by contempt proceedings.

That such relief only ameliorates rather than prohibits violations of law resulting from the imposition of unreasonable clearance by the defendants is implicit in the mere statement of these provisions. However, they have served the purpose of recording the facts concerning such unreasonable clearance abuses as were brought to arbitration, for the guidance of the Court in dealing with this problem. These decisions do not, of course, constitute a record of all of the unreasonable clearances which exhibitors have been subjected to by these defendants as the proceedings were instituted only by such exhibitors as believed that the prospect of securing the extremely limited relief held forth by the decree warranted the substantial expenditure of money and effort required to carry an arbitration through to final decision.

In a number of these cases one or more of the defendants was found to have imposed substantial clearance between theatres in entirely separate communities which were in only slight competition with each other. Under the decree, as interpreted by the Appeal Board, relief was limited to a more reduction of such clearance rather than its elimination. These holdings are tabulated as follows:

Case No.	Complainant's Theatre	Distributor Defendant Imposing Unreasonable Clearance	Maximum Clearance Finally Awarded
4A	American, Canton, N. Y.	R.K.O., Warner	3 days favor Strand, Ogdensburg, N. Y.
9	York, Capitol Athol, Mass.	Loew	1 day favor Fitchburg, Fitchburg, Mass.
[fol. 3523]			
10	Apex, Washington, D. C.	Loew	5 days favor Calvert Uptown, Washington, D. C.
22	Liberty, Freehold, N. J.	R.K.O., Fox, Loew, Paramount and Warner	(1) 3 days favor Lyric, Asbury Park, N. J. (2) 7 days favor St. James, Mayfair and Paramount, Asbury Park, N. J.
23	Bayne, Virginia Beach, Va.	Warner	5 days favor Newport, Norfolk, Va.
30	Tioga, N. Philadelphia, Pa.	Warner	21 days favor Strand, N. Philadelphia, Pa. with exceptions.
32	Playhouse, Clyde, N. Y.	R.K.O., Fox, Loew, Paramount and Warner	7 days favor Capitol, Newark, N. Y.
38	Colonial, Manchester, Vt.	Loew, R.K.O.	1 day favor Paramount, Grand, Rutland, Vt.
39	San Val, Burbank, Calif.	R.K.O., Loew, Paramount and Warner	28 days favor Major, Magnolia, and Loma, Burbank, California

Case No.	Complainant's Theatre	Distributor Defendant Imposing Unreasonable Clearance	Maximum Clearance Finally Awarded
45	Smalley, Sidney, N. Y.	R.K.O., Fox, Loew, Paramount and Warner	3 days favor Colonia, Norwich, N. Y.
50	Beverly and Glenn, St. Louis, Mo.	Paramount, R.K.O., Fox, and Warner	(1) 1 day favor Wellston, St. Louis, Mo. (2) 1 day favor Victory, St. Louis, Mo. on picture not shown at Wellston.
52	Bountiful, Bountiful, Utah	R.K.O., Fox, Loew Warner	(1) 28 days favor Centre, Utah, Studio, Paramount, Rialto, Salt Lake City, Utah. (2) 14 days favor Capitol, Victory, Salt Lake City, Utah (with exceptions).
53	Smalley, Delhi, N. Y.	R.K.O., Fox, Warner, Loew and Paramount	3 days favor Oneonta, Palace, Oneonta, N. Y.
64	Beacon, Beacon, N. Y.	R.K.O., Fox, Loew and Warner	1 day favor Broadway, Rits, Newburg, N. Y.
68	Savoy, Bloomfield, N. J.	R.K.O., Fox, Loew and Paramount	(1) 14 days favor Royal; 7 days favor Broadmoor, Bloomfield, N. J.
81	Ellicott, Elicott City, Md.	R.K.O.	7 days favor Alpha, Catonsville, Md.; *less* 1 day for each day delay in booking films by prior run theatre.
[fol. 3524]			
86	Liberty, Herkimer, N. Y.	R.K.O., Fox, Loew and Paramount	7 days favor Stanley, Avon, Olympic, Utica, N. Y.
93	La Salle, Niagara Falls, N. Y.	R.K.O., Fox, Loew, Paramount and Warner	30 days favor Strand, Cataract, Bellvue, Niagara Falls, N. Y.
97	Apollo, Buffalo, N. Y.	R.K.O., Fox, Loew, Paramount and Warner	10 days favor Elmwood, Buffalo, N. Y.
100	Ampere, E. Orange, N. J.	R.K.O., Fox, Loew Paramount and Warner	1 day favor Beacon, E. Orange, N. J.
104	Playhouse, Ayer, Mass.	Fox, Loew, Warner and Paramount(*)	(1) 1 day favor Plymouth, Metropolitan, Leominster, Mass. (where playhouse not subject Lowell clearance); (2) 7 days favor Strand, Merrimac, Lowell, Mass.

(*) On all except Paramount.

In holding that there should be some clearance between theatres which were not in substantial competition but merely drew some patronage from the same general area, the Board apparently assumed that entering an award prohibiting a distributor from granting clearance in favor of one theatre over another in the same competitive area

was an unwarranted interference with the distributor's right to license the competing exhibitors on such runs as he may deem necessary to exploit his films properly. Whether this conclusion was compelled by the language of the decree or not,[2] the result has been that the defendants have been expressly allowed to impose clearance between theatres only slightly competitive even though, in such circumstances, there is no public justification whatsoever for contractual arrangements of this character.

In this connection, it should be understood that a prohibition against the imposition of clearance in favor of one theatre against another does not compel the distributor to do business with either theatre or both except upon such terms as he finds profitable. While Section VI of the decree, and the Sherman Act, itself, does prohibit him from refusing to deal with one theatre for the purpose of protecting another from competition, if his refusal to deal is based solely on the protection of his total revenue from a [fol. 3525] particular competitive area he does not run afoul of Section VI.

The distributor may, as he frequently does, deal with the two theatres upon an open booking basis; that is to say, permit each to book the films licensed for exhibition to his theatre without regard to the time at which they are exhibited in the other. The mere mechanics of booking films for exhibition from eight or ten different distributors, all of whom serve numerous customers with each positive print, may seldom permit the playing of the same film simultaneously in the two theatres, but they may be served without discrimination by supplying prints as the prints and playing time in the theatres involved become available. Thus, the pictures released by a particular distributor may alternately be made available first to one theatre and then the other so that at the end of the season, although they have never played the same pictures simultaneously, neither theatre has been relegated to a fixed inferior position by the distributor in question. Thus all that the elimination of clearance in a particular situation does is to permit service of prints to the theatres involved upon a non-discriminatory basis, if the distributor licenses them both. It does not

[2] In other cases the Board has abolished all clearance between certain theatres which were only slightly competitive. See Nos. 22, 36 and 100.

compel him to license either or restrict him in any way from charging such rentals and imposing such admission price, and other restrictions as may be appropriate to the protection of his combined revenue from both.

The primary evil inherent in the imposition of any clearance between theatres which are not substantially competitive is not that it suppresses competition for patronage but that it establishes a discriminatory sequence of exhibition which has no relation to the legitimate needs of the distributor or the public. What it does is simply give the theatre enjoying the clearance booking control over the theatre against which it is held. The latter thus becomes entirely dependent upon the manner in which the former books pictures as they may not be made available in the second theatre until after they have been played in the first and this is true whether the clearance is one day or thirty days. Such control is indubitably desired by the [fol. 3526] theatres enjoying such clearance and to the extent that they may insist upon it as a condition of doing business with the distributor, the granting of it might be regarded as beneficial to him in the sense that, without it, he might not obtain the exhibitor's business. But the *Interstate Circuit* case, *supra*, clearly establishes that neither the Sherman Act nor the copyright statute permits the use of agreements restricting the use of a copyrighted film merely to satisfy the demands of a dominant theatre owner, who owns no copyright, at the expense of the public interest. The public supplying the bulk of the patronage for the controlled theatre suffers with the exhibitor discriminated against from his inability to respond to their demands in booking films for exhibition in the controlled theatre while the public patronizing the theatre exercising the control enjoys no corresponding benefit whatsoever.

We respectfully submit that a provision prohibiting the imposition of any clearance between theatres not in substantial competition with each other should be added to the existing decree.

As previously noted, the ostensible public justification for clearance is that its use is essential to support a structure of varied entertainment at varied admission prices. A theatre playing films on first run at a high admission price might ordinarily be expected to require clearance over a second run charging a lower price, and so on down the scale of runs and admission prices. However, there is clearly

no legitimate purpose in granting clearance between theatres which charge the same admission price, whether they draw from precisely the same area, or whether they are twenty miles apart. The only effect of imposing clearance between such theatres when they are highly competitive is arbitrarily to divert patronage from one to the other. Prices being the same, there is only one way in which they can compete at all and that is by offering a better entertainment value for the money and the public clearly suffers from the imposition of any restriction upon that [fol. 3527] competition.

As for the distributor, he has no interest, putting aside the question of circuit-buying power and theatre affiliation, in such arbitrary diversion of patronage from one theatre to another. His only legitimate aim is obtaining the maximum revenue from the exhibition of his films in both theatres. To the extent that one pays a greater rental by virtue of superior physical facilities, superior management, better rental terms or any other reason, he may regard one theatre as a superior customer to the other. Even so there is clearly no occasion for him to restrict arbitrarily the ability of the inferior operator to compete with the other in exhibiting his films by compelling the latter to play behind the former at the same or a greater admission price, unless he decides to promote the business of the favored customer as against the inferior one instead of promoting his overall film revenue from both.

[fol. 3528] Cases in which the Board found that unreasonable clearance had been imposed between competing theatres charging substantially the same admission prices but left some clearance between them in effect are tabulated as follows:

Case No.	Complainant's Theatre	Distributor Defendants Imposing Unreasonable Clearance	Maximum Clearance Finally Awarded
4A	American Canton, N. Y.	RKO, Warner	3 days favor Strand Ogdensburg, N. Y.
9	York, Capitol Athol, Mass.	RKO, Fox, Loew, Paramount, Warner	1 day favor Fitchburg Fitchburg, Mass.
10	Apex Washington, D. C.	Loew	5 days favor Calvert Washington, D. C.
17	Colony Sayreville, N. Y.	RKO, Fox, Paramount, Warner	7 days favor Capitol South River, N. J.
18	State, Texas Atlanta, Tex.	RKO, Fox, Warner	1 day favor Paramount Strand, Texarkana, Tex
20	Palm St. Louis, Mo.	Paramount, Fox	3 days favor Aubert, St. Louis, Mo.
22	Liberty	RKO, Fox, Loew,	3 days favor Lyric

Case No.	Complainant's Theatre	Distributor Defendants Imposing Unreasonable Clearance	Maximum Clearance Finally Awarded
22	Freehold, N. J.	Paramount, Warner	Asbury Park, N. J.
23	Bayne Va. Beach, Va.	Warner	5 days favor Newport, Norfolk, Va.
24A	Bailey Buffalo, N. Y.	Fox, RKO, Warner	1 day favor Kensington Buffalo, N. Y.
27	Dickinson Mission, Kansas	RKO, Fox, Loew, Warner, Paramount	1 day favor Aztec Shawnee, Kansas 14 days favor Plaza Kansas City, Mo.
30	Tioga N. Phila., Pa.	RKO, Fox, Loew, Warner, Paramount	21 days favor Strand N. Phila., Pa.
37	Regent Buffalo, N. Y.	RKO, Fox, Loew	3 days favor Apollo Buffalo, N. Y.
39	San Val Burbank, Calif.	RKO, Loew, Warner, Paramount	28 days favor Major, Magnolia, Loma Burbank, Calif.
47	Texas Bastrop, Tex.	Warner	23 days favor Strand Bastrop, Tex.
49	Orpheum Saugerties, N. Y.	RKO, Fox, Loew, Warner	7 days favor Broadway Saugerties, N. Y.
[fol. 3529]			
50	Beverly, Gem St. Louis, Mo.	RKO, Fox, Warner, Paramount	1 day favor Wellston St. Louis, Mo.
52	Bountiful Bountiful, Utah	RKO, Fox, Loew, Warner	14 days favor Victory Salt Lake City, Utah
53	Smalley Delhi, N. Y.	RKO, Fox, Loew, Warner, Paramount	3 days favor Palace Oneonta, N. Y.
60	Rivoli St. Louis, Mo.	RKO, Fox, Warner, Paramount	7 days favor Senate, Lyric St. Louis, Mo.
64	Beacon Beacon, N. Y.	RKO, Fox, Loew, Warner	1 day favor Broadway Newburg, N. Y.
67	Smalley Johnstown, N. Y.	RKO, Fox, Loew, Warner, Paramount	14 days favor Hippodrome, Gloversville, N. Y.
73	Dueber Canton, Ohio	RKO, Loew, Warner, Paramount	7 days favor Mozart, State, Valentine, Strand Canton, Ohio
74	Riant Conshohocken, Pa.	RKO, Fox, Loew, Warner, Paramount	7 days favor Garrick Norristown, Pa.
79	Colonial Skaneateles, N. Y.	RKO, Fox, Loew, Warner, Paramount	1 day favor Palace
88	Apollo St. Louis, Mo.	RKO, Fox, Warner, Paramount	7 days favor Pageant St. Louis, Mo.
90	Trylon Forrest Hills, N. Y.	RKO, Fox, Warner, Paramount	1 day favor Drake Middle Village, N. Y.
96	Winchester Winchester, Mass.	RKO, Fox, Loew, Paramount	7 days favor Strand Woburn, Mass.
97	Apollo Buffalo, N. Y.	RKO, Fox, Loew, Warner, Paramount	10 days favor Elmwood Buffalo, N. Y.
100	Ampere E. Orange, N. J.	RKO, Fox, Loew, Paramount, Warner	1 day favor Beacon E. Orange, N. J.
102	Liberty, Madison Covington, Ky.	RKO, Fox, Loew	10 days favor Family, Shirley Covington, Ky.
103	State Saugus, Mass.	RKO, Fox, Loew, Warner, Paramount	14 days favor Mystic Malden, Mass.
104	Playhouse Ayer, Mass.	Fox, Loew, Warner, Paramount	1 day favor Plymouth, Metropolitan Leominster, N. Y.

We respectfully submit that the foregoing experience demonstrates that the general problem of unreasonable clearance is inadequately dealt with in the existing section [fol. 3530] VIII of the decree and that an adequate temporary provision must also flatly prohibit the granting of any clearance between theatres charging substantially the same admission price.

If this be deemed an interference with the distributor's right to discriminate among its customers in granting runs that objection has no support in law. Any relief granted in this case necessarily circumscribes the right of these defendants to discriminate among their customers in imposing one or more of the restrictions that they customarily incorporate in their license agreements. That such relief is necessary and appropriate when such restrictions have been used to violate the Sherman Act is established by *Interstate Circuit* v. *United States*, 306 U. S. 209, and *United States* v. *Crescent Amusement Co.*, 323 U. S. —, December 11, 1944.

The determination of the maximum length of clearance permissible in competitive situations where admission price differentials exist should be so adjusted that the period of clearance between any two theatres is proportionate to the admission price differential between them if there is to be any public justification of such clearance. This may be accomplished by a prohibition of all clearance in excess of that reasonably related to the maintenance of competition between two or more competing theatres charging different admission prices.

Apart from these general provisions, specific temporary relief expressly directed against unreasonable clearance arising from distributor affiliation is urgently required. There is no dispute that (1) each of the distributor defendants Fox, Loew, Paramount, RKO and Warner controls a large circuit of theatres, (2) each licenses films to its own circuit, the circuits owned by the others and theatres competing with them by license agreements which fix the minimum admission prices to be charged by all of the theatres licensed, (3) maintenance of those admission prices is tied to run and clearance provisions determining

the relative time at which the films licensed become avail-[fol. 3531] able for exhibition in competing theatres.[4]

We submit that such a system of admission price fixing by cross licensing is *prima facie* illegal because it is in effect a means by which affiliated theatre operators, through their distribution affiliates, agree with each other as to the admission prices that should be charged by their various theatres in the competitive areas in which each operates and as to those to be charged by independent theatre operators who compete with these affiliated theatres. Such a price-fixing system is unreasonable *per se* and may not be justified under the Sherman Act by any proof that these defendants might offer. See *United States* v. *Socony Vacuum Oil Co.*, 310 U. S. 150, 219-224; *United States* v. *Masonite Co.*, 316 U. S. 265, 274. Pending the elimination of that system by divorcement of the distributor defendants from their theatre operating affiliates or such other permanent relief as may be granted at a trial on the merits, we believe that the use by them of clearance restrictions which adversely affect unaffiliated theatres attempting to compete with their theatres must be prohibited, at least where such a distributor cannot demonstrate that a particular clearance in favor of an affiliated theatre is essential to secure for the distributor the maximum film rental available from the competitive area involved. Such relief would be comparable in form to that granted by the Supreme Court in *United States* v. *Crescent Amusement Co.*, *supra*, although the substantive test is less exacting than that of showing no unreasonable restraint of competition imposed by the Crescent decision.

Such a provision is one which is far short of the ultimate clearance relief to which the plaintiff is entitled as a matter of law as it would permit a temporary justification of individual licensing agreements which the plaintiff expects ultimately to have declared void as unreasonable *per se*. Cf. *Interstate Circuit* v. *United States*, 306 U. S. 209. All

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[4] See the Appendix hereof and standard forms of license attached. Precise extent of theatre ownership is disclosed by defendants' answers to plaintiff's interrogatories 50 and 52.

[fol. 3532] that this temporary provision would do is to deprive affiliated theatres of such unfair clearance advantages as they now derive *by virtue of affiliation with these large distributor owner circuits in a limited class of cases.* It is, in effect, merely an extension of the doctrine now in force in section VI of the decree which prohibits a refusal to license a run on any terms except where the distributor can show that such a refusal will have the effect of reducing its total film rental in the competitive area in which the theatre refused the run is located. Such refusals to license a run on any terms are merely an exaggerated form of the protection against competition afforded by clearance and are based upon essentially the same considerations which lead a distributor to impose clearance which unreasonably restrains the ability of an independent theatre to compete with affiliated theatres and large independent circuits.

Insofar as the clearance abuses inherent in the suppression of the business of smaller independent operators by large independent circuits are concerned, the plaintiff believes that the ultimate relief required to obviate such violations lies in dissolution of such circuits. *Cf. United States* v. *Crescent Amusement Co., supra.* To the extent that such violations involve licenses made by the distributor defendants here they may be dealt with in this proceeding and for that reason unreasonable clearances which result from the use of independent circuit-buying power should also be outlawed in this suit. The general provisions previously suggested should be adequate temporary relief for this purpose but they do not deal specifically with the problem of clearance discrimination arising from the affiliation of theatres with distributors, which is at the heart of this case, and for which a special provision directed at unreasonable clearance in favor of affiliated theatres is necessary.

In the following cases the Board, under the limitations imposed by the decree, was prevented from eliminating entirely clearance found to be unreasonable which had been granted in favor of affiliated theatres, although the theatres [fol. 3533] involved were so located as to compete only

slightly with each other or charged substantially the same admission prices:

Case No.	Distributor Defendant Affiliated With Theatre Holding Unreasonable Clearance	Affiliated Theatres
9	Paramount	Fitchburg and Shea Fitchburg, Mass.
10	Warner	Calvert and Uptown Washington, D. C.
18	Paramount	Paramount and Strand Texarkana, Texas
24A	Loew and Paramount	Kensington Buffalo, N. Y.
27	Fox	Plaza Kansas City, Mo.
30	Warner	Strand and Keystone N. Phila., Pa.
36	Paramount	Paramount and Grand Rutland, Vt.
52	Paramount	Centre, Utah, Studio, Capitol and Victory Salt Lake City, Utah
64	Paramount	Ritz and Broadway Newburg, N. Y.
68	Warner	Royal and Broadmoor Bloomfield, N. J.
73	Warner	Ohio Canton, Ohio
86	Warner	Stanley and Avon Utica, N. Y.
96	Paramount	Capitol Arlington, Mass.
	Warner	Strand Woburn, Mass.
97	Loew and Paramount	Elmwood Buffalo, N. Y.
103	Paramount	Paramount Lynn, Mass.
	Warner	Warner Lynn, Mass.
[fol. 3534]		
104	Paramount	Fitchburg and Shea Fitchburg, Mass. Strand and Merimac Lowell, Mass.

In the following cases clearance granted to affiliated theatres was found to be unreasonably long but the theatres involved substantially competed and charged different admission prices:

Case No.	Distributor Defendant Affiliated With Theatre Holding Unreasonable Clearance	Affiliated Theatres
33	Warner	Stanley, Grand and Lyric Camden, N. J.
66	Paramount	Metropolitan Paramount Fenway Scollay Modern

	RKO	Keith Boston Keith Memorial
	Loew	Loew's State Loew's Orpheum
75	Warner	Castle and Sanford Irvington, N. J.
84	Fox	Apollo Los Angeles, Calif.
91	Paramount	Peerless Kewanee, N. Y.

Case No.	Distributor Defendant Affiliated With Theatre Holding Unreasonable Clearance	Affiliated Theatres

In the following cases complaints against clearance granted by one or more of the distributor defendants in favor of its own theatres had to be dismissed, because exempted from arbitration by section XVII of the decree, although similar clearance granted by others was found to be unreasonable.

Case No.	Distributor Dismissed
27	Fox
28	Loew
64	Paramount

[fol. 3535]

Case No.	Distributor Dismissed
69	Fox
73	Loew, Warner
82	Paramount
85	RKO
91	Paramount
96	Paramount, Warner
103	Paramount, Warner
104	Paramount

V. The Consent Decree Is Inadequate To Prevent the Defendants from Violating the Sherman Act by Granting Unreasonable Clearance.

A serious defect in the existing section VIII of the consent decree is that the burden of showing a particular clearance imposed by these defendants to be improper is placed upon the complaining exhibitor instead of upon the defendant imposing it. Any system which relieves them of the burden of sustaining the reasonableness of restraints of trade of this character gives them a considerable immunity merely because of the procedural obstacles placed in the way of bringing such restraints into the open. In

some cases the complaining exhibitor has not been aware of certain clearances with which he was confronted in the course of the arbitration proceedings until the defendants offered proof of it.[5] In all cases the complainant goes into the proceeding without any information whatsoever as to what the distributors experience with film rentals received from other theatres in the area would indicate as to [fol. 3536] the necessity of any particular clearance to protect overall film revenue.

In addition to this fundamental procedural difficulty, the many qualifying limitations of the present clearance provision cut down the scope of the complaints which may be arbitrated and the relief which may be granted. How the provisions preserving the distributor's right to discriminate in licensing runs has prevented the elimination of clearance in situations where it would otherwise be eliminated has already been pointed out in the decision cited under section IV of this brief. We have also referred there to the cases in which the exemption of affiliated theatres as contained in section XVII of the decree has prevented the arbitrator from granting relief against some of the defendants even though the clearance they imposed in favor of their own theatres was found to be unreasonable. Adjustment of unreasonable clearances has also been prevented in many cases by the existence of franchise agreements exempted by section XV of the decree, which defect has been noted by the Appeal Board in Case No. 54.

In Cases Nos. 25 and 50 the Board has also noted the inability of complainants who do not currently license the films of a defendant to arbitrate the unreasonableness of the clearance imposed against it in contracts made with the defendant by another competitor. Cases Nos. 17, 54,

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[5] In case No. 104 the Board said:

"In prior cases, as in this, the Board has had to consider a situation where the complainant did not know of some of the clearances granted by the defendants against his theatre, since they were contained not in contracts with him but in contracts with other exhibitors giving them clearances against his theatre. While the Board finds itself in no position to grant the relief which complainant asks, our comment is that this method of granting clearances seems unfair to us."

96, 103 and 104 have noted that clearances by which a theatre in one community is subjected to clearance of theatres in two or more other communities is unreasonable on its face but the awards merely give relief to the particular exhibitors involved in these cases with the result that the distributors are still free to impose unreasonable clearance of this character until and unless other exhibitors learn of them and attack them.

The manner in which the distributors successfully rely upon arbitrary limitations in the decree to frustrate the granting of equitable relief is illustrated by the following comment in Case No. 71, a Section VI proceeding:

> Counsel for Paramount makes no attempt in his brief either to answer or to mitigate the severe criticisms made by the Arbitrator of his client's conduct. He [fol. 3537] confines his argument wholly to the lack of power of the Arbitrator under the Decree to redress an injustice clearly shown by the record to have been done to the Welden. We share the Arbitrator's conviction that the Welden deserves a first run ahead of the Empire, and were it not for the limitations imposed by the Decree we should either direct the restoration of first run to the Welden, which is what the complainant really desires and deserves, or else we should affirm the award without question on the ground that it does equity and justice between the parties concerned. Section VI of the Decree, however, grants no authority to an Arbitrator or to the Board to make an award directing the offer to an exhibitor of any specified run. The Decree unquestionably reserves to each distributor, where two theatres are in the same competitive area, the right, subject only to the provisions of Section X which are not applicable here, to decide which theatre shall have the prior run.

The persistent use by the consenting defendants, during the pendency of this suit, of clearance provisions as a means of unreasonably restricting the terms on which theatres may compete in licensing their films and the inadequacy of the present decree to afford adequate relief against such violations of the Sherman Act are beyond dispute. We respectfully submit that the provisions suggested are the

minimum which the Court may properly grant if the persons now subjected to the illegal restrictions in question are to be given adequate protection pending the entry of a final decree in this case.

Respectfully submitted, Wendell Berge, Assistant Attorney General; Robert L. Wright, Philip Marcus, Special Assistants to the Attorney General; Kenneth R. Lindsay, Horace Morrison, Special Attorneys.

[fol. 3538] Appendix

Attached hereto and marked Exhibits A, B, C, D, and E, respectively are photostatic copies of sample license agreements voluntarily supplied by Loew, Paramount, RKO, Fox, and Warner, respectively, in response to a letter dated July 28, 1944, from the plaintiff requesting the printed forms of feature license agreements currently in use.

Each form contains on its face appropriate blank spaces for the insertion of the evening and matinee, children and adult admission prices of the theatre licensed, the run licensed and the applicable clearance. The printed provisions containing the exhibitor's agreement to observe these prices, the penalties for noncompliance, and the general run and clearance provisions are found in the following excerpts from these forms.

Loew

IV. Clearance and Run. Unless otherwise provided, clearance is to be computed from the last licensed date of exhibition of each picture. During the life of this contract Loew's agrees not to exhibit or license the exhibition of any of said pictures in conflict with the "run" or prior to the expiration of the clearance period, if any, in the Schedule specified, but any violation hereof shall not affect this contract except as to the particular picture involved, and the damage which may be claimed by Exhibitor and which may be awarded in any arbitration or litigation shall not exceed the amount of the license fee herein provided for such picture, or, if it is a participating picture, the amount of damage claimed or awarded shall be limited as stated in the last sentence of the "Default" clause. Such claim for damage (as limited above) shall be Exhibitor's sole and exclusive remedy on account of such violation. If

other than a first run is granted hereunder Loew's shall have the right to license and/or exhibit any or all of said pictures as a "continued first run" (i. e., a run either at the initial first run or a moveover theatre immediately after [fol. 3539] the initial first run and prior to any run except first, with admission prices not less than those of the initial first run), whereupon Exhibitor's availability shall be postponed accordingly and any clearance herein provided over the theatre where such continued first run occurs automatically modified. If a second or subsequent run is herein granted, Exhibitor shall exhibit any of the pictures on an earlier run if Loew's so requires.

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IX. Admission Prices. Exhibitor agrees: (1) During the entire engagement of each picture to charge for each admission not less than the respective prices shown in the Schedule, and that if without Loew's prior written consent any of them are reduced Loew's may proceed as stated in 2(a) below; and (2) as to each participating picture to account to Loew's on the basis of the respective admission prices in the Schedule for each person admitted (a customary and reasonable number of free admissions is permitted), except that if any admission price charged is greater than herein scheduled Exhibitor shall account on the basis of the larger amount; and that if any scheduled admission price is reduced without such consent, or Exhibitor does not account as above provided with respect to any one or more such pictures, Loew's may either (a) forthwith change or modify the run, availability and/or clearance herein provided for or (b) may exercise the remedies provided under "Default."

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XV. Default. If Exhibitor violates any of the provisions of this agreement or becomes insolvent or is adjudicated bankrupt or executes an assignment for creditors or a receiver is appointed for any of Exhibitor's property, or if Exhibitor violates any of the provisions of any other exhibition contract(s) heretofore or hereafter made with Loew's, then in any of said events Loew's may either (1) terminate this contract or (2) terminate this and such other contract(s) or (3) suspend delivery of further pic-

tures hereunder (and, if Loew's elects, also under any or [fol. 3540] all such other contracts) pending compliance by Exhibitor.

Paramount

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right: (a) to immediately terminate the license of the motion picture then being exhibited and of all the remaining motion pictures not theretofore exhibited hereunder, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion pictures shall forthwith terminate and revert to the Distributor and the Distributor may, at its option, declare such failure or refusal a breach of the entire contract entitling the Distributor to recover from the Exhibitor as damages therefor the license fees payable in respect of all motion pictures not theretofore exhibited hereunder; or (b) forthwith to revoke the run, availability and clearance, if any, herein provided for and to fix the run, availability and clearance applicable to each motion picture thereafter deliverable hereunder, and the Exhibitor agrees to exhibit each such motion picture in accordance with the run, availability and clearance so fixed; and (c) if the license fee of any such motion picture is to be computed either in whole or in part upon a percentage of the gross admission receipts of said theatre, then the Exhibitor shall account to the Distributor for all admissions to said theatre during the exhibition of such motion picture upon the basis of the said admission prices specified above. The Exhibitor shall not be entitled hereunder to any change in the run, availability or clearance, if any, herein provided for, by reason of any increase in admission prices at said theatre after the signing of this application by the Exhibitor.

It is expressly understood and agreed that the above minimum admission prices are exclusive of any State, Federal or local taxes which now are or may be imposed upon admission to the theatre or theatres licensed hereunder.

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[fol. 3541] Clearance and Run—Seventh: (a) Subject to the provisions of paragraph (b) of this Article, the Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the

run or prior to the expiration of the clearance period if any in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder, disregarding any "roadshow," "try-out" or "preview," or special "midnight" exhibition. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

(b) The Distributor shall have the right to exhibit or grant a license to exhibit any of said motion pictures as a "road-show," "try-out" or "preview" or special "midnight" exhibition at any time prior to the exhibition thereof hereunder. Any such 'road-show," "try-out" or "preview" or special "midnight" exhibition shall not be deemed a run of said motion picture, nor shall the run, availability or clearance provided herein with respect to said motion picture to be governed thereby.

* * * * * * *

Remedies—Fourteenth: If the Exhibitor shall otherwise fail or refuse to perform any of the terms and conditions on the part of the Exhibitor to be performed hereunder or if the Exhibitor shall fail or refuse to perform any other license agreement with the Distributor, then upon the happening of any one or more of said events, the Distributor may at its option (1) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied, or (2) declare this license agreement breached by the Exhibitor entitling the Dis-[fol. 3542] tributor to recover from the Exhibitor as liquidated damages for such breach the license fees payable in respect of all motion pictures not theretofore exhibited under this agreement and the Distributor shall be under no obligation thereafter to deliver or offer to deliver any motion picture or motion pictures hereunder.

R. K. O.

If during the exhibition of any picture hereunder, the Exhibitor should charge lower admission prices than those hereinbefore specified, the Distributor, in addition to all other rights hereunder shall have the right (a) to immediately terminate the license for the picture then being exhibited by giving written notice to that effect to the Exhibitor, and upon giving such notice the license for such picture shall thereupon terminate forthwith and revert to the Distributor; or (b) to reduce by not more than one-half any clearance period granted herein to the Exhibitor in respect of each picture thereafter deliverable hereunder; or (c) if no clearance is granted herein, then to withhold for not more than sixty (60) days the availability notice to the Exhibitor in respect of all pictures thereafter deliverable hereunder, and as to each such picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such picture after notice of the availability thereof upon the date or dates determined as provided in Article Ninth hereof.

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Clearance and Run

Fourth: If the Exhibitor is granted a specific run or clearance of the pictures hereunder and is not in default hereunder, the Distributor will not license the exhibition of any such picture in conflict with the run or prior to the expiration of any clearance period so granted the Exhibitor.

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[fol. 3543] Exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the licensed pictures thereafter deliverable hereunder; or (c) provided no period of clearance is specified in the Schedule to withhold, for a period not to exceed sixty (60) days notice of the date when each picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such picture after notice of the available date thereof upon the date or dates determined as provided in paragraph 7 hereof;

if Distributor does not elect to terminate the license of the picture then being exhibited, as provided in subdivision (a) of this paragraph, the Exhibitor shall account for all admissions to said theatre during the exhibition of such picture on the basis of the admission prices hereinabove stipulated.

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8. Clearance and Run—The Distributor agrees not to exhibit or license the exhibition of any of said licensed pictures in conflict with the run or prior to the expiration of the clearance period, if any, specified in the Schedule at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said licensed pictures shall be computed from the last date of the exhibition thereof herein licensed.

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16. Remedies—If the Exhibitor shall fail or refuse to perform the terms and provisions of this agreement, or any of them, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein, then, upon the happening of any one or more of said events, the Distributor may at [fol. 3544] its option: (1) terminate this license agreement, or (2) suspend the delivery of pictures hereunder until such default or defaults shall cease and be remedied.

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Warner

Clearance—Eighth: Distributor agrees not to exhibit or grant a license to exhibit any picture in conflict with the "run" or prior to the expiration of the "clearance period," if any, in the Schedule specified for any theatre therein named or within the territorial limits therein defined. The period of clearance as to each picture shall be computed from its last date of exhibition and unless otherwise provided in the Schedule shall cover any theatre thereafter erected or opened in the immediate vicinity of Exhibitor's theatre.

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Admission Prices—Eighteenth: Throughout the exhibition period of each picture Exhibitor shall charge for admission to said theatre as a minimum, the prices specified in the Schedule and unless a greater minimum is therein specified the minimum shall not be less than fifteen cents (15¢) for each adult person for each matinee and evening performance. If during any such period less than such minimum admission is charged, Distributor, in addition to all other rights of Distributor hereunder in the event of a breach, may at its option by written notice to Exhibitor, either terminate this license in its entirety or with respect to the picture then being exhibited.

. . . . . .

Remedies for Breach—Seventeenth: If Exhibitor violates any of the provisions of this agreement . . . Distributor, in addition to all other rights may at its option (1) terminate this license agreement or (2) suspend the further delivery of pictures until such default or defaults cease and be remedied.

[fol. 3545] In United States District Court, Southern District of New York

Equity No. 87-273

United States of America, Petitioner,

vs.

Paramount Pictures, Inc., et al, Defendants

Before Hon. Henry W. Goddard, District Judge

Stenographer's Minutes of Hearing

[fol. 3546] Before Hon. Henry W. Goddard, District Judge

New York, March 5, 1945,
10:30 o'clock a. m.

Appearances:

Robert L. Wright, Esq., Harold Lasser, Esq., Philip Marcus, Esq., and Horace Morrison, Esq., Special Assistants to the Attorney General, for the Government.

Simpson, Thacher & Bartlett, Esqrs., Attorneys for Paramount Pictures, Inc. and Paramount Film Distributing Corporation; Whitney North Seymour, Esq., and Albert C. C. Bickford, Esq., of Counsel.

John W. Davis, Esq., Attorney for Loew's Incorporated; John W. Davis, Esq., and Theodore Kiendl, Esq., of Counsel.

[fol. 3547] Donovan, Leisure, Newton & Lumbard, Esqrs., Attorneys for Radio-Keith-Orpheum Corporation, RKO Pictures, Inc., RKO-Proctor Corporation, RKO Midwest Corporation, and Keith-Albee-Orpheum Corporation; George S. Leisure, Esq., R. R. Irvine, Esq., and Granville Whittlesey, Jr., Esq., of Counsel.

Joseph M. Proskauer, Esq., Attorney for Warner Bros. Pictures Inc., Vitagraph, Inc., Warner Bros. Circuit Management Corporation.

Dwight, Harris, Koegel & Caskey, Esqrs., Attorneys for Twentieth Century-Fox Film Corporation and National Theatres Corporation; John F. Caskey, Esq., of Counsel.

O'Brien, Driscoll & Raftery, Esqrs., Attorneys for United Artists; Edward C. Raftery, Esq., of Counsel.

Charles D. Prutzman, Esq., Attorney for Universal defendants; Edward C. Raftery, Esq., and Adolph Schimmel, Esq., of Counsel.

Morris L. Ernst, Esq., Attorney for Society of Independent Motion Picture Producers, appearing only on the question of amicus brief.

Abraham L. Myers, Esq., and Jesse L. Stern, Esq., Attorneys for the Conference of Independent Exhibitors.

L. D. Frohlich, Esq., Attorney for Columbia Pictures.

[fol. 3548] The Court: Mr. Wright, I suppose we will hear you first.

Mr. Wright: If the Court please, I believe we have two motions here today. One of them is the hearing on our motion for interim relief with respect to unreasonable clearance and the other is the motion to set the entire case down for hearing on the merits on a day certain. Insofar as we are concerned the latter is the more important motion of the two. The motion for preliminary relief deals with only a small aspect of the case and I think we should first proceed to dispose of the trial date if we could.

Your Honor will recall last December that we asked to have the matter set down for trial on the merits and

that we again served a formal notice of motion for this hearing, as the representatives, I think of three of the defendants, were not present at that December hearing. But we now have served a formal notice of motion on them and I think the date should now be set.

Mr. Proskauer: Will you Honor ask Mr. Wright to speak up so we can hear him? I don't know what he is saying.

Mr. Wright: I am sorry, Judge.

The Court: Well, what do you suggest? What do you [fol. 3549] ask for, Mr. Wright?

Mr. Wright: We should like to have as early a date as possible with this qualification: That we have the Griffith case to try in Oklahoma City which is now set for May 7th. So I would assume the earliest date would be some time in September. I assume your Honor won't sit during the Summer.

The Court: I beg your pardon?

Mr. Wright: I assume your Honor will not be sitting in the Summer.

The Court: Nor in September I hope.

Mr. Proskauer: Not too early I hope, your Honor.

The Court: Mr. Wright, I usually get my vacation that time. October I think would probably be better. That is probably what you yourself prefer although you asked for an early date.

Mr. Wright: Whatever is agreeable with the court schedule here and——

The Court: I should think early in October. Of course I have to make that subject to conferring with Judge Knox because I am afraid it is going to be a very long trial and we will have to rearrange our assignments. It will be long, will it not?

Mr. Wright: I think how long it is depends on what [fol. 3550] we can accomplish in pretrial proceedings, but I should think we should have a definite date fixed now in order to make the pretrial procedure effective.

The Court: Yes. How about, say, the second Monday in October?

Mr. Wright: That would be agreeable to the Government.

Mr. Seymour: I think that will be agreeable to the defendants, your Honor.

The Court: Just see. That would be the 8th of October.

Mr. Davis: October 8th?

The Court: Yes, sir, Mr. Davis.

Mr. Wright: It is important that we get a general idea of how long this case is going to take. We make up our schedules of assignments—they have been made—and will have to be changed if I am engaged in this case for a substantial period.

Mr. Wright: I should think, if the Court please, it would be very difficult to give an accurate estimate of the time until we have a pretrial conference at which the question of how much of these issues are going to be seriously disputed will be discussed. I would hope that if it is agreeable to your Honor we could have such a conference at a very early date, let's say next month.

[fol. 3551] The Court: I will cooperate in every way. We will set it down now for October 8th. Now that is subject, however, to a possible change if it is going to interfere too much with the schedule.

Mr. Wright: Could we have a date for a pretrial conference now too?

The Court: Yes. Most any time would suit me.

Mr. Proskauer: That is perfectly agreeable to us, your Honor. We would like very much to have it.

The Court: Supposing we leave that until we finish with this matter. But you would like to know before you return to Washington?

Mr. Wright: Yes, we would.

The Court: We will talk it over later during the day. If I forget it you remind me, will you?

Mr. Wright: I shall.

I assume that your Honor has read the memorandum that we filed on February 5 in support of our motion for preliminary clearance relief.

The Court: I have read it, Mr. Wright. I have read it and I thought I read it carefully, but I have read it only once and I can't say that I am entirely familiar with it.

Mr. Wright: I simply wanted to point out at the outset that we did file that memorandum and served copies on the [fol. 3552] defendants so that there would be a fairly clear statement of the issues here before we arrived in the hearing room. Now in addition to our memorandum a response was filed by the defendants, I believe on February 20th, which I assume your Honor has also read, consisting of two or three pages.

The Court: That was a letter.

Mr. Wright: It was in the form of a letter of a couple of pages.

The Court: Yes, on February 19th I received a letter from Simpson, Thacher & Bartlett enclosing a copy of a letter written by various counsel for the defendants to Mr. Berge. That is the letter you refer to?

Mr. Wright: Yes.

Your Honor will recall that in our memorandum we pointed out that we would not seek to offer any oral testimony at this hearing, that our case would be made by offering and relying upon the decisions of the Appeal Board which was established by the order of this Court to review the decisions of arbitrators made in the course of the arbitrators' disposition of disputes under the provisions of Section 8 of the consent decree, and that in addition to that we should also rely on the answers to interrogatories filed [fol. 3553] by these defendants which show the extent of the theatre ownership of each of these distributor defendants which own theatres,—that is, the defendants who have consented to the decree—and we would of course also rely upon the license agreements which were attached to the memorandum—that is, the photostatic copies are attached —and the provisions which we thought pertinent are also attached as an appendix to the memorandum.

Now as we understand the defendants' position on this clearance question from their formal response they contend that all that the Court can do at this hearing is to look at the decisions of the Appeal Board.

The Court: Is to what?

Mr. Wright: As I understand the defendants they concede that your Honor may examine the decisions of the Appeal Board which we shall offer, but apparently only for the limited purpose of determining whether or not the arbitration provisions of the decree have been operating satisfactorily within the limits of the existing decree. Apparently if the Court decides that they have so operated then the defendants assert that we can have no more clearance relief no matter how inadequate those provisions of the decree may be in terms of Sherman Act enforcement.

Then if the Court finds that the system has not been oper- [fol. 3554] ating satisfactorily apparently the defendants insist that the decree still has to be left alone as they do not concede that a determination that the present provisions

of the decree are inadequate in dealing with clearance is in itself any basis for granting further temporary relief.

Now the Government's position is that the decree and the arbitration provisions can only justify themselves as an effective law enforcement method—that is, that your Honor is not sitting here in this proceeding to determine whether or not a satisfactory method of adjusting trade disputes has been set up and operated by the American Arbitration Association. Our contention here is that notwithstanding the undisputed merits of the functioning of the system as such that the decree within which it functions simply does not do the job that it was intended to do under the Sherman Act, and that is, prohibit and restrain the granting of unreasonable clearance.

The Court: I wish one of the first things you would do is to define affirmatively what unreasonable clearance is.

Mr. Wright: That is something that most of us I think have been struggling with for years without getting very satisfactory results.

[fol. 3555] The Court: You tell me what it is not, but what is unreasonable clearance?

Mr. Wright: That is it. But I should say that the answer that we propose and the petition for modification we filed on August 7, 1944, is that unreasonable clearance is clearance which unreasonably restrains competition. I don't think you can come any closer in a broad general definition than the terms of the Sherman Act itself.

The Court: That means that each instance has to be determined on its own particular facts, doesn't it?

Mr. Wright: I think that is quite correct but I think the fundamental mistake in approach that the present decree makes to the problem is starting out with the assumption that the burden is on some exhibitor complainant or someone who challenges the clearance arrangement to say that the restraint is an unreasonable one. I think that normally these restrictive provisions which embody clearance are prima facie illegal restrictions which can only be justified if those who impose them can show that there is some public benefit or that the arrangement is somehow necessary to the promotion of fair competition—that is, that on their face [fol. 3556] every clearance arrangement that these defendants make does restrain competition between two or more theatres in licensing their films.

We have pointed out as conspicuous examples of clearance which is unreasonable the situations where the defendants by these clearance provisions divert patronage from one theatre to another on a completely arbitrary basis which does not have any reasonable relationship either to the needs of the theatre-going public or to the needs of these distributors in protecting their film rental.

The Court: May I ask you, if you don't mind my interrupting, do you take the stand that all clearances are unreasonable?

Mr. Wright: We don't take the stand that all clearances are unreasonable but I think it is perfectly clear that all clearances are direct restraints of trade which fall within the prohibition of the Sherman Act unless they may be affirmatively shown to be reasonable in their nature and the real issue here is, who has the burden of justifying those restraints. Whether the Court in evaluating them may assume that the restraint is reasonable simply because it is used and is in existence, or whether the defendants have got to show that imposing a restraint of that kind is a proper and reasonable thing to do.

[fol. 3557] Now we say that clearly insofar as these defendants impose clearance in favor of each other's theatres by a system of cross licensing that is currently in effect, that those agreements, highly restrictive in their nature, are invalid on their face. Ultimately we would expect to obtain a decree in this suit which would outlaw completely the making of any such restrictive licensing agreements between these defendants, that is, through licensing each other's theatres.

As for the temporary relief, at this stage, we say that we will have shown when we introduce this material a prima facie case of illegality which would warrant the Court in prohibiting all of such arrangements except insofar as these defendants may come in and justify them as reasonably necessary for the conduct of the business.

Now the argument as to how and why we think these restraints are unreasonable I, of course, would prefer to leave until after we have offered this material that we expect to rely on. All I wanted to do first was to simply review how we got to this particular point in the litigation where we are now and to comment on one particular statement in the response that to us was rather startling.

[fol. 3558] As your Honor may recall that particular statement was that they were surprised at our suggestion that this arbitration system by which the present decree is enforced was in effect by agreement of the parties. Now we think that it is perfectly clear that the only way in which such system as this may be set up as a public law enforcement device is with the express consent of the Government and in no event are the defendants entitled to the particular means of enforcement that we adapted here on an experimental basis for a three-year trial period as a matter of judicial right.

Now in order to illustrate the fundamental difference between the defendants' view of the proper function and purpose of this arbitration system and ours I think it is necessary to review the previous action in this connection in the suit. Your Honor will recall that when this consent decree was established in November 1940 it was expressly established for a three-year trial period. The provisions with respect to the methods of selling pictures were limited to a one-year period, that 1941-1942 season. Those restrictions in blocks of five trade showing all expired at the end of that season although the defendants have continued to use that method of distributing films because it apparently [fol. 3559] has been more profitable to do so. Again at the end of three years the right was expressly reserved on our part to proceed to litigate the main issues of the suit, that is, the trade divorcement of the distributors from their theatre ownership and dissolution of their circuits and at the end of that period the restriction on the defendants' acquisition policies which had been incorporated in Section 11 of the decree also lapsed. There is also a provision in the decree which said at the end of three years any party was free to move for any modification of the decree whatsoever.

Now the arbitration provisions did not lapse automatically but in our view have been continued only because of the failure of either the Government or the defendants to move to set them aside, and that is what we mean when we say that they continue by agreement plus the fact that the continuance of the Appeal Board, as your Honor knows, has been twice extended by express stipulation of the parties.

Now after the expiration of the three-year period there were extensive negotiations between the parties looking toward a new decree and a proposal for a new decree was submitted by the defendants to the Department which suggested

certain minor improvements in the arbitration system and [fol. 3560] in the restrictions which the decree had contained, but still left untouched the main issues of the suit, that is, the theatre divestiture which is sought by the plaintiff. But these improvements in the functioning of the arbitration system and in extending the scope of the decree were expressly conditioned upon a further immunity of not less than five years against the prosecution or from the prosecution of the main issues of the suit.

Now that proposal received very careful consideration by the Department, by the Attorney General himself, and was rejected by him and that led to our filing last August a petition for modification in which we set forth the kind of provisions that the Department thought would be necessary to convert the existing decree into one adequate to enforce the Act. Then your Honor will recall that the opportunity which we offered by the proposal for modification to permit these defendants to continue under a decree which was made by consent and which avoided an adjudication of the issue of violation of the Act by simply submitting to your Honor for adjudication the question of what proper relief is—assuming violations of the Act—that opportunity was rejected by these defendants. So at that stage modification [fol. 3561] of the consent decree as such became impossible, as without consent, at least in some aspects, no such procedure was possible, and we were then driven to the point where in order to obtain any adequate relief at all we must, as we see it, actually try the case, establish violations, and secure the relief that those violations warrant.

As to this particular proceeding the clearance violations in themselves are only one minor aspect of the main problem, that is, clearance discrimination is only one of a dozen forms of discrimination in licensing films which arises out of the control of theatres by these defendants and the aggregation of other theatres in large circuits by independents who do business with them. So that in no event is this relief that we are seeking here anything more than, as we see it, a mere stop gap as to one particular aspect of the case in which the violations have been fairly continuous and frequent.

Now I don't think that I need say anything more at this time with respect to the theory of the motion other than that we expect to show by the material we offer for your Honor's consideration prima facie violations of the

Act with respect to unreasonable clearance since the decree was filed and the failure of the existing decree to [fol. 3562] deal adequately with those violations.

The first thing we want to offer, your Honor, are these 104 decisions of the Appeal Board. I have asked Mr. Braden to bring over a set and I don't think there will be any dispute as to the authenticity.

Mr. Proskauer: You may assume we won't have any question about that.

Mr. Wright: I think for the purposes of the record we ought to have the volumes offered.

Mr. Proskauer: You are offering them. We have an objection to their going into evidence.

Mr. Seymour: If your Honor please, the defendants have a fundamental objection to receiving these in evidence. We have indicated in our letter to Mr. Berge, which your Honor has a copy of, that we do not make any question as to the authenticity of the decisions, nor would we object to their consideration merely on the question of the way the decree has worked. But as evidence, evidence of violations of law, we have a fundamental objection. It would seem to me that for your Honor's convenience perhaps the way to proceed at this stage would be to have Mr. Wright mention these decisions, your Honor look at them, but not receive them in evidence at this time, and hear the argument on the defendants' side [fol. 3563] in which the objection will be discussed. If your Honor would prefer to have the objection stated more fully at this time I am prepared to do so.

The Court: No, I should think that would be all right. Wouldn't that be satisfactory to you? Have them marked for identification and then consider a little later whether we receive them in evidence?

Mr. Wright: It is immaterial to us at what point your Honor rules except we want it understood that our position is that those Appeal Board decisions are admissible for all purposes to prove violations of law and for whatever other conclusions your Honor may legitimately draw from the examination. And we are offering them not for any limited purposes but for all purposes in the suit.

Mr. Raftery: Are they being offered against the non-consenting defendants or against just the consenting defendants?

Mr. Wright: I think it is perfectly clear by the fact that the non-consenting defendants are not parties to the proceeding they would be in a somewhat different position to challenge the facts that are stated there than the parties that were. But I repeat they are being offered for whatever they may be worth against every defendant in the suit for all purposes.

[fol. 3564] The Court: On just what theory would they be admissible against the defendants who had no part in those proceedings?

Mr. Wright: I don't suppose they would be admissible to show any particular act of any of those defendants. However they are, I think, quite admissible in the suit for the purpose of acquainting the Court with a general course of business in the industry of which these other defendants are a part, and I suppose to that extent they might be said to be admissible against them, although that issue it seems to me is wholly academic at this point where we are seeking no temporary relief against these defendants.

Mr. Raftery: We would like to be heard on that later.

Mr. Caskey: Will it be understood that we all have the benefit of the objection?

The Court: What was that?

Mr. Caskey: I say may we all have the benefit of Mr. Seymour's objection?

Mr. Proskauer: May we not have an understanding that any objection made by defendants' counsel redounds to the benefit of all defendants' counsel?

The Court: Yes, but I think you ought to make a dis-

[fol. 3565] tinction between the consenting defendants and the others.

Mr. Proskauer: I am speaking only for the consenting defendants, the good ones.

(Government's Exhibits 1 to 5 marked for identification.)

Mr. Wright: (To Clerk) You might state what each of those is in terms of numbers of decisions covered by each volume so we have in the record a statement of what each one has in it.

The next material that we wish to offer in evidence, if the Court please, is the consenting defendants' answers to plaintiff's interrogatories numbered 50-A and 52. 50-A is an interrogatory which called for a statement of

the defendants' financial interests either direct or indirect in theatres in the United States.

The Court: Mr. Wright, did you say answers to interrogatory 50-A and——

Mr. Wright: 50-A is one number and 52 is the other.

The Court: That is Exhibit 6.

Mr. Seymour: May that be handled in the same way, your Honor?

The Court: Yes, but why would they not be admissible—interrogatories taken in this proceeding?

Mr. Seymour: Well, a technical objection perhaps [fol. 3566] would not lie, but the question of their relevancy to an injunction application, which is the kind that is before your Honor; is one which I think ought to be argued out in connection with the general argument.

The Court: Mark it for identification then.

Mr. Wright: As to marking I was informed that we were unable to locate the original interrogatories in the clerk's office which are on file and I have with me only our own copies which we of course don't want to surrender. So that I would suggest that if we could assign numbers to the documents now to be applied to the originals on file when they are located that would be sufficient in making the record.

Mr. Proskauer: Well, your Honor, just as a matter of convenience for your Honor and counsel in the brief that we are going to file we have referred to these by the number that the Appeal Board uses. Wouldn't that be a convenient way to refer to them?

Mr. Wright: I not having seen your brief have no idea——

Mr. Proskauer: Naturally you haven't seen it because it is still in proof. But I am suggesting, whether you have seen it or not, that it might be a convenience to both counsel and the Court if we refer to the numbers [fol. 3567] used by the Appeal Board. If it is not agreeable all you have to say is it is not agreeable.

Mr. Wright: I beg your pardon. I thought you were referring to the interrogatories. We of course have referred to them by their numbers and I assume that is the most convenient way for anyone to refer to them.

Mr. Caskey: Now how are you going to mark this?

Mr. Wright: Only the volumes containing them will be marked with a number and after that we will have a

designation in the record which will tell you the numbers of the Appeal Board decisions that are contained in that volume.

As to the interrogatory answers I think we should assign an exhibit number at this time to each one of them even though we haven't the originals present.

Mr. Caskey: There are ten numbers then?

Mr. Wright: There would be ten numbers, yes—no, there would be more than that. Well, I will take them in order here.

You mark the Loew answer to interrogatory 50-A as Exhibit 6 for identification and the Loew answer to interrogatory 52 as Exhibit 7 for identification.

I don't believe I mentioned the difference between the [fol. 3568] two. 50-A is the statement of all of the interests which the defendants have in theatres. 52 is a statement of the interests which are jointly held in theatres in which other defendants are also interested.

Then the Paramount answer to 50-A will be Exhibit 8 for identification and the Paramount answer to 52 will be Exhibit 9.

The Court: What is that, Mr. Wright?

Mr. Wright: That is Paramount.

The Court: The first, Exhibit 7 for identification, is the answer to interrogatory 52 by——

Mr. Wright: Loew. Exhibit 6 is the answer to interrogatory 50-A by Loew and Exhibit 7 the answer to 52 by Loew. Exhibit 8 is Paramount's answer to 50-A and Exhibit 9 is Paramount's answer to 52, all for identification.

(Answers to interrogatories above mentioned to be marked Government's Exhibits 6, 7, 8 and 9 for identification.)

Mr. Wright: Now the Warner Bros. answer to 50-A and 52 I believe is contained in the same document. However I think that all that need be marked for identification in that case is a list which appears in the Warner document marked "Answers to interrogatories" which is [fol. 3569] headed "Theatres owned or leased by Warner Bros. Pictures, Inc. and subsidiaries," which consists of twelve typewritten pages. That list I think may be marked Exhibit 10. That would be marked in lieu of Warner's full answer to Exhibit 2, interrogatory 50-A.

(To be marked Government's Exhibit 10 for identification.)

Mr. Wright: Then Warner's answer to 52 will be marked as Exhibit 11 for identification.

(To be marked Government's Exhibit 11 for identification.)

Mr. Wright: And the Fox answer to 50-A will be marked Exhibit 12 for identification and the Fox answer to 52 as Exhibit 13 for identification.

(To be marked Government's Exhibits 12 and 13 for identification.)

Mr. Wright: Then there are three answers for the RKO theatre operating companies. The answer of RKO Midwest Corporation to interrogatory 50-A may be marked as Exhibit 14.

The Court: Mr. Wright, I didn't get that last one. This relates to what?

Mr. Wright: This relates to RKO. RKO has three operating subsidiaries each of which made a separate answer. This one is RKO Midwest Corporation. Ex-[fol. 3570] hibit 14 for identification is the answer to 50-A and Exhibit 15 for identification would be the RKO Midwest Corporation answer to 52.

(To be marked Government's Exhibits 14 and 15 for identification.)

Mr. Wright: Then the answer to 50-A of Keith-Albee-Orpheum Corporation will be marked Exhibit 16 for identification and the answer of the same corporation to 52 will be 17 for identification.

(To be marked Government's Exhibits 16 and 17 for identification.)

Mr. Wright: The answer of Radio-Keith-Orpheum Corporation to 50-A will be 18 and the answer of the same corporation to 52 will be 19.

(To be marked Government's Exhibits 18 and 19 for identification.)

Mr. Wright: Now we have attached to the memorandum that we submitted photostatic copies of the forms of

license agreement that are currently in use by these defendants and I don't think there is any occasion to have those separately marked as exhibits unless there is some dispute as to authenticity that I am not aware of or unless the defendants desire to have another set of these contracts marked and placed in evidence.

[fol. 3571] Mr. Caskey: Mr. Wright, I understand that a full photostatic copy is annexed to the original moving papers.

Mr. Wright: Yes, front and back. The whole thing.

And that completes our offers of proof in connection with this motion.

Mr. Proskauer: If your Honor please, I have been asked by my associates to make a general statement to your Honor of our position on this argument. My friend comes in here having asked for quick trial of this case and secured it and asks for the most drastic relief known to the law—a temporary injunction—without a pretense of showing those fundamental things, which I need not argue to a Judge of your Honor's experience are conditions precedent to the granting of this drastic temporary relief. And while in the course of what I shall have to say I may refer to a technical argument or two, and they are destructive of the Government's position, essentially I am making an appeal to your Honor's sense of fairness and justice and common sense.

Now at the very outset then where does the Government get a right to ask for temporary injunction? The statute says that when the parties complained of shall have been [fol. 3572] duly brought into court and pending any such petition and before final decree the Court may issue a temporary injunction. Here we have a final decree.

I might rest there, but as I told your Honor I want to show you the unreasonableness and unfairness of the Government's position, not merely its technical inadequacy.

What is this decree? And what do they say is your Honor's function here? I wrote it down. That you are not to sit here to determine whether this decree has worked well, and the Government makes the concession that it has worked well. And in the face of that they still come here and say, "We are asking for a temporary injunction. We must show immediate need. We must show danger to the public. We have got a quick trial. But the Judge who created or was so valuable to all the parties in creating this magnificent arbitral system, he has nothing to say as to whether this

decree is really working. He must not consider the question of whether it is good."

That is an amazing position to be taken by a man who asks for a temporary injunction against a final consent decree.

Now let us go to the next step. What about this decree? [fol. 3573] This is what the Government agreed to: "It is recognized that clearance reasonable as to time and area is essential in the distribution and exhibition of moving pictures." And there was a recital agreed to by the Government, "Controversies arising upon the complaint of an exhibitor that the clearance applicable to his theatre is unreasonable shall be subject to the arbitral provisions."

Now why did the Government agree to that? We are not used to regarding the Antitrust Division as Santa Claus. They develop curious ideologies at times in their pursuit of alleged monopolies. They agreed to that because under the law they had to.

What my friend loses sight of completely in his argument about clearance is that we are not selling merchandise. We are licensing the right to exhibit a copyrighted picture. And all this stuff that we have heard here about price fixing and about the evil implications of price control might have some relevance if we were selling bricks or stone or clothes. But we have based our brief on the law, the copyright law.

Your Honor will find under the Morosco case that the Supreme Court has decided squarely that we got a perfect right to make a restrictive license with respect to the exhi- [fol. 3574] bition of our copyrighted motion pictures, and I just want to find that part of our brief.

(To Mr. Caskey): Find me that in our brief.

I will take it from another memorandum here. In Manners v. Morosco the Court held squarely that the owner of a copyright who licenses it can impose restrictive conditions and at the same time restrain the licensor from granting other licenses which interfere with that.

In the very case that my friend relies on, Manners v. Morosco—I mean Interstate Circuit v. The United States, one of the great cases where predatory practices were involved, which do not exist on this motion because there has been no showing of anything but the ownership of the theatres—and these decisions I shall advert to in a moment—in this Interstate case the Court said, "Under Section 1

of the Copyright Act the owners of the copyright of a motion picture film acquire the right to exhibit the picture and to grant exclusive or restrictive license to others to exhibit it."

I could pile Pelion on Ossa on that point. Your Honor will find it in our brief. I am not arguing for what I am afraid my friend in his enthusiasm will try to put in my [fol. 3575] mouth, that the right to license gives the owner of a copyright any right to enter into other collateral conspiracies which might meet condemnation of the law. But we have no such case here. I am referring to this point merely to illustrate and eliminate the question of why the Government had to consent that clearance reasonable was required in the conduct of this business and why they recognize what was in us a fundamental right so long as we did not do the predatory things which have been condemned in cases like the Interstate case.

Now from there I go on.

What does my friend say is his reason for urging your Honor that he has shown per se a violation of the Sherman law? Now his own brief, your Honor, concedes these two points: He says that he must show that we imposed unreasonable clearances which prima facie violate the Sherman Act and, two, that the decree in its present form fails to give adequate relief against such violations.

I say to your Honor that he has lamentably failed in both those undertakings.

Your Honor asked a question of my good friend here which went to the heart of this thing—what is an unreasonable clearance? And as I go through very generally these cases your Honor will get the import of his inability to answer that question except in a rigmarole that unreasonable [fol. 3576] clearance is unreasonable clearance. That is what his answer came down to, and to suggest that because an Appeal Board in X cases decided that clearance was unreasonable by one day or in X cases by two days or in X cases by ten days—and I am going to give you some of the figures on the brief—that that proves a violation of the Sherman law is just, I submit to your Honor, the reductio ad absurdum of argument. And that contention of mine is not only implicit in the situation; it is explicit: Because here is what the Appeal Board says on that subject:

In No. 76 the matter of Gary the argument was made that because the complainant independent theatre owner had

brought a suit in the District Court for violation of the Sherman law for treble damages and had lost his case that therefore the reasonableness of clearance was res adjudicata and that he could not therefore succeed in a subsequent appeal he made for arbitration as to the reasonableness of his clearance.

I am going to read a few lines, with your Honor's permission, from this opinion of the Appeal Board because it is so scholarly, and I may say, so in line with the general scholarly and decent and fair approach of those three members of that Appeal Board that I say to your Honor that [fol. 3577] you never I believe in your experience will find a body of decisions that show a clearer understanding of facts, of law, and a desire to do justice in a complicated situation, so complex that there is practically no other way of handling it than under some such machinery as we devised with your Honor's aid. I am going to show your Honor that they themselves have demolished this argument that the Attorney General here makes.

> "The principle of res adjudicata could not possibly apply"—says the Appeal Board, "The issues in the Federal Court and in this proceeding are entirely different. In the Federal Court the issue is whether a conspiracy could be established in violation of the Sherman Antitrust Law. No such issues are involved in this proceeding. The question here is whether this clearance is reasonable or unreasonable. This issue is not involved in the Federal Court suit and the denial of the Arbitrator of this motion under Section 786 is correct and is affirmed."

And isn't that common sense? How could anybody seriously claim that a court of justice in an activity as complex and as difficult to administer as this would issue the temporary injunction that my friend Wright asks for, to [fol. 3578] restrain us under penalty of punishment for contempt from what he calls unreasonable clearance on a showing of nothing other than that from time to time the Appeal Board decided that certain clearances ought to be modified. What was the purpose of this consent decree? It was to accomplish just that, your Honor. When we sat around the table and when we came before your Honor we all knew that one of the most difficult things in the world to determine was clearance. We all knew that Judge Chest-

nut had held in the Westway case, and we know that it is the law of this land today, that clearance was right and just and necessary. We all knew that there were certain grievances that certain of the independent theatre owners had and we in good faith sat around the table with the Government and agreed on this machinery, and now the Government comes in and says, "Because you agreed to it and because it is working effectively and because the Appeal Board has done justice and adjusted the clearance provisions to the necessities of each particular situation"—and your Honor intimated in your question that they must be so adjusted, and indeed they must—he comes in and says, "You must not pay any attention to the fact that that decree is working perfectly, you must not pay any attention to the fact that the Appeal Board is redressing slight injus- [fol. 3579] tices time to time,"—and they are slight—"you must just assume as a matter of law that because they found injustices to adjust that therefore the defendants are violating the Sherman Law per se and you must pin them to the earth with an injunction restraining them from unreasonable clearance."

Your Honor, the statement of that claim is its answer.

Now let me go ahead. There is talk in his brief and in his motion papers—a lot of it—about substantial and unsubstantial competition. These Appeal Board members never decided that they were without power to meet that situation. Of course it has always been a fundamental tenet of the motion picture industry that it could not license a picture for simultaneous exhibition in a given area to two conflicting interests. Our copyrighted picture would not be worth very much to us if we did that. And nobody says that we have to. But what the Appeal Board has done is this: —and again I am going to ask your Honor's permission to read one opinion to illustrate the effective approach—and I am accentuating the word "effective"—I mean by effective an approach which does the job decently and honestly and justly. This is what they say on that subject that has agitated Mr. Wright so: "If the area served by the theatres [fol. 3580] are such there is no competition between them no clearance is justified." And when they find such a situation that was so or they have reduced the clearance to one day and they claim repeatedly, continuously in their opinion—and you will find them on our brief—the right to abolish clearance entirely where there is no competition.

"But," they say, "on the other hand if it appears that there is real competition, though perhaps small, the only award the arbitrator is authorized to make under the decree is one fixing the maximum clearance between the theatres involved which may be granted in licenses thereinafter entered into."

This language means that where theatres are in the same competitive area the arbitrator may not eliminate all clearance. In other words, they have reduced the whole proceeding to a common sense treatment. If there is no competition between the theatres the arbitrators can say there shall be no clearance. If there is substantial competition they may say there will be a substantial clearance. If there is slight competition in case after case they have reduced the clearance to one day saying that that was fair and that was the right thing to do. And my friend says that that proves that the defendants are quasi criminals violating the Sher- [fol. 3581] man Law and they have got to take the risk of an injunction restraining them in the general words "unreasonable clearances."

Here is what they say also, and this so much substantiates the implication of your Honor's question: "In the arbitration or clearance controversies under the decree the form of the consideration must always be the determination of what is reasonable in the particular case rather than the formulation of inflexible rules and their application with unyielding rigidity. General principles are to serve as standards but can never be stated so precisely as to exclude the possibility of exceptions demanded by fairness and equity."

Just imagine your Honor sitting where you sit and hearing a motion to punish us for contempt for violating the injunction which he seeks. What are you going to do? Here one man says that reasonable clearance is one day and another says it is twenty days and you take all these things into account and send a man to jail or punish him on a hearsay, vague consideration like that.

Now let's see what the Appeal Board did in these cases. Where the competition was slight—you will find these collated on our brief—in X cases they reduced it to one day, where it was a bit more to three days, in one group [fol. 3582] of cases to five days, in another to seven days depending on the intensity of the competition. And where the competition was greater they reduced it in some cases to ten days, to fourteen days, to twenty-one days, twenty-

eight days, or thirty days, deciding each case on its own merits. In over 75 per cent of the cases listed the Board wrote that some clearance was proper. It was only in 25 per cent of the cases that there was any question at all raised as to whether there should be no clearance. There are only six cases in which clearance was reduced to one day.

That is the gravamen of his grievance, that if the Court had had power—if the arbitrators had had power they would not have reduced it to one day but abolished it. In these cases there is no basis for the claim that the Board would have abolished clearance entirely if it had had the power. All they say in those cases, and we have collated them on our brief, is that there being slight competition the clearance should be reduced to one day, and in not a single case does the Appeal Board suggest that clearance should be eliminated even where there is competition though slight.

Now I am a little puzzled about my friend's strategy. [fol. 3583] I think he is, in the vernacular, laying back for me. He wants me to argue first so that he can then come along. But twice armed is he who has a cause as just as ours, and I don't mind that little strategy. I have met it from the Attorney General before. I might just as well anticipate him. He says that there should never be clearance between two theatres which have the same admission price. Well, why not? There are cases where clearance was granted in favor of a theatre charging a lesser admission price. What the Appeal Board says is that the amount of the admission price is a factor and a very important factor in determining clearance. But here are the things they say they must take into account in addition, and again I am giving you a catalog of the ships. The cases that he cites are cases where the Board said they had to take into account larger seating capacities, whether theatres were superior physically, whether they paid higher film rentals, whether they represented a much more substantial investment and engaged in a superior type of operation. Where does the Government, powerful though it be, get the license to come in here and say to this industry, "This Appeal Board does not know what it is talking about. We demand that you change this decree so that equality of [fol. 3584] admission price is ipso facto determinative of the whole question of clearance no matter how important the other factors may be in it."

I have anticipated him on that and if he gets any advantage out of that he can make the most of it.

Now then he makes a point that there should be something done about the fact that the decree excludes from arbitration our clearances to our own theatres. Your Honor will find that in practice we have never insisted on that. And if that was the only thing he had to say I would personally say to your Honor—and I bind no defendant now—de minimis non curat lex. It is such an inconsequential thing in the actual working out and we have never insisted on it and that little change certainly would not hurt anybody. And if he was nice and reasonable in court as he sometimes is out of court and came and talked to us about that I am sure that on that one point there would not be very much trouble.

But my colleagues always say to me that no argument by me on this subject of this arbitration system is complete unless I say that you must not burn down the house to roast the pig, and certainly to get that little result we are not compelled, I think, to destroy this arbitral system by [fol. 3585] a sweeping and vague injunction such as my friend here asks for.

Now then I want to come to the very last thing to which I shall advert; that is, this question of burden of proof. Well, there is very little to that, your Honor. In fact there is nothing to it. I want to begin by reading again what the Appeal Board says on that question of burden of proof. I will put my hand on it quickly. They say it is desirable to avoid legalistic refinements in arbitration proceedings.

Mr. Wright: Excuse me, Judge; what is the number of it?

Mr. Proskauer: That is Samuel Hookberg, No. 68. And in every case the Board and the arbitrators clearly required these defendants to produce evidence and information which was in their control. The importance of that is this: My friend says, "Think of the poor little distributor."

Mr. Wright: Exhibitor.

Mr. Proskauer: Yes, exhibitor. You see, the truth will out. The distributor is the poor little man. It is the exhibitor who is on top under this decree. That just showed a subconsciousness of the truth in me.

Here is the picture friend Wright paints: This little exhibitor comes in and he says, "My clearance is unreason-

able, I have to prove it, and I haven't got any evidence [fol. 3586] and I am just miserable."

Well now, your Honor, anybody can require these defendants to produce all the evidence in the world. Nobody is going to object to that, and burden of proof doesn't make any difference to us at all except in one aspect—that if you do put the burden of proof on us, thus entirely reversing the ordinary course of events, we are going to have 15,000 cases. There are 15,000 independent theatres struggling along under the domination of this terrible monopoly and making an awful lot of money and making a good deal of money out of asserting claims under the aegis of the Attorney General's office. We don't want that. That is not fair. If your Honor wants to provide that whenever a claim is made of unreasonable clearance that all the consenting defendants have to produce all their records and information relating to that particular claim you would be directing us to do no more than the arbitrators already direct us to do and that we have been doing and that meets that completely.

You see, when you begin to monkey with a complex structure like this you don't know where you are going to get. Take, for example, going back a moment to this claim of my friend's that clearance ought ipso factor to be denied [fol. 3587] where the admission price is the same. What would we have? A little theatre over there charges 35 cents and the theatre here charges 50 cents and the little fellow who is charging 35 cents sees a chance to make a ten-strike. He just raises his admission price to 50 cents and then he will come along and say, "Now you can't get any clearance over me." Where does the public get off? The dear public which is my friend's concern is going to be robbed by a continuous increase in the exhibition price of the showing of these films.

And so it is wherever you try to change anything by an ipso dixit and what the Appeal Board referred to as rigidity you are doing something that I would say with all the earnestness that is in me, your Honor, works not only to the disadvantage of these consenting defendants, it works to the disadvantage of the American public that today sees every one of these pictures, pictures costing three, four or five million dollars, to be produced ultimately for as little as ten or fifteen cents. That is the job these defendants are doing.

Your Honor, as I listened to my friend I couldn't, much as I love him, escape the feeling that the mountain labored and brought forth a mouse. What is all this about? What [fol. 3588] is the terrible danger to the public between now and the first Monday in October that requires the granting of this temporary relief—this drastic and threatening temporary relief? This vague relief? What is there that actuates us all to get into all this stew when we are going to try this case now and we will find out whether we have to divorce these theatres or not, that being the Government's pet contention?

And there again I wish to convince your Honor that nothing could be more harmful to the general public than the granting of that relief. But that is for the future. For the present what in the world has been shown here to actuate an equity judge, a chancellor, into granting temporary relief when there is question as to his power to do it, when there is no showing whatever of any illegality, when the inference drawn from these opinions is strained and untenable, and where in the final analysis there is not a single thing shown by way of pressing necessity to call on your Honor to exercise or grant this drastic relief?

What I have said will indicate to your Honor what our position is about these opinions. They are no evidence whatever of violation of the Sherman Law and we ask your Honor not to take them as that evidence. But however you [fol. 3589] take them and however you decide the technical points which I have raised I rest my appeal to you to deny this motion fundamentally on the decencies, the equity and the justice of this situation.

Mr. Seymour: May it please the Court, I would like to say just a word about the nature of this decree at this stage before I start dealing with the motion.

There isn't any possible doubt on the face of the decree that the arbitration provisions with respect to clearance are still in effect. The whole decree shows that except for those provisions which fell at a certain date the balance of the decree is still in effect. It is also clear that the decree is fine even though it is a consent decree. That has been authoritatively decided.

Now the only way to deal with anything which is included in this decree is by a modification of the decree under its terms, and this is not a motion for modification. This is

a motion for a temporary injunction and is governed by the ordinary rules of temporary injunction except for the serious problem which Judge Proskauer mentioned at the outset that an injunction under an antitrust case under Section 4 is to be considered before final decree.

[fol. 3590] But I pass on from that point.

The matter I want to deal with particularly is the problem of whether these Appeals Board decisions should be received on the basis on which they are offered by the Government. The Government says that on this motion they have two burdens: First, to prove that there have been violations of law; and second, to show that the decree does not appropriately deal with those violations or adequately deal with them.

Now we think that there are further burdens as there always are on an injunction motion, but just to consider those, these Appeals Board decision are offered of course on the first branch of that burden, to attempt to show prima facie violations of law.

Now what have they actually covered? Well, they are selecting out of 106, I think, some 51 in which the Appeals Board has reduced clearance or approved arbitrators' decisions reducing clearance all the way from one day up. They represent decisions on particular facts in particular cases under the standards laid down in Section 8 of the decree. They do not deal, were not intended to deal, and could not deal with questions of violations of the Sherman Act. Section 8 elaborates the considerations which were to be taken into account by the arbitrators and which were [fol. 3591] to be considered on appeal by the Appeals Board. They constitute the various elements which enter into the original business decision as to the length of clearance. The clearance arrangements which were reviewed by arbitration were business decisions, negotiated by distributors and exhibitors, and the arbitration provision, Section 8, the standards which the arbitrators were to apply, were those business standards, and this provided an independent review of the business judgment.

Now it is perfectly apparent that the standards set forth in Section 8 for the review of that business decision, a business decision which as your Honor knows involves intricate problems in the particular area and the particular situation—it is ridiculous to suppose that that review embraced a consideration of Sherman Act violations. If it

should be deemed to that would mean that this decree really set up the arbitrators in the place of the Court to pass on questions of violations of law and that the defendants by consenting, knowing that some of the decisions would be bound to go against them, set back after creating a noose which would be used at such time as the Government wanted to use it after a sufficient number of decisions adverse to distributors had developed.

[fol. 3592] Now it is perfectly evident, as Judge Proskauer has pointed out, the Appeals Board has held squarely the other side of this in the Gary case that a court decision that clearance was reasonable does not bind the Appeals Board, and the Appeals Board could nonetheless hold, applying the standards of Section 8, that in the particular situation it was unreasonable.

Now this is an a fortiori case. If a court case which might have all the elements of res adjudicata and stare decisis cannot be used to control the decision of the arbitrators, obviously a decision of the arbitrators under the limited standards of Section 8 cannot be regarded as res adjudicata and stare decisis for the purposes of considering violations of the Sherman Act. It seems to me it is apparent on the face of the decree, it is apparent by the fact that this is an arbitration decision that they were not considering violations of law and that they could not be vested with that power, were never vested with that power by the Court or the Government or by the defendants. Their decisions had none of that aspect. They are not a court. They proceed informally, not under regular rules of evidence. They are not bound to take into account the purpose, the [fol. 3593] nature, the effect of the things that they do consider. They are not bound to take into account the general things that would have to be taken into account in a Sherman Act case.

So it seems to me perfectly apparent that fine as the Appeals Board work is within the sphere in which it operates it cannot be stretched to amount to proof of violations of law to sustain the burden of the Government on this motion. It doesn't on its face, it doesn't as a matter of intent or fair intention of the decree or the purpose of the parties. The Appeals Board has so held the other way, and this is plainly an a fortiori case.

Now in the absence of any proof of violations of law—and these decisions are not proof of violations of law—there is no need to go to the second question at this stage of the case, as to whether the decree needs modification or not, because this is not a motion to modify. This is the typical motion for injunction on the questions raised under Section 4 and there is no other proof adequate to sustain a claim of violation of law. These interrogatories which are mentioned do not deal with anything but a few questions of fact which have nothing to do with violations of law, and the license agreements to which counsel have re-
[fol. 3594] ferred are just the ordinary license agreement. There is no dispute that they are in effect, but they do not prove any violations of law and therefore at the very threshold there is a complete failure to show any violations of law. We think that your Honor therefore ought to sustain the objection to receiving these Appeals Board decisions and also to receiving the interrogatories on the grounds suggested.

The problem has one serious aspect, from the point of view of the defendants of course, in addition to that I have mentioned. Section 5 of the Clayton Act, which deals with consent decrees, would create some question perhaps—at least the matter has not been decided—if there were ever a subsequent modification of this decree and evidence was received at this stage of the case. So that our friends on the other side are apparently entirely aware of that. But if evidence should now be received, it might create serious difficulties in the way of any subsequent modification by consent from the defendants' point of view.

That is not a reason why your Honor should exclude the evidence but it is a serious problem for the defendants and a reason for your Honor's giving the greatest serious consideration.

[fol. 3595] The Court: I missed part of your argument on that, Mr. Seymour.

Mr. Seymour: Your Honor is familiar with Section 5 which provides in effect that a consent decree shall not be prima facie evidence of anything in a treble damage case. It also provides in effect that it must be a consent decree before testimony taken. Now it has never been adjudicated, but if evidence should be received at this stage of the case and at some subsequent stage it should be deemed desirable

to make some modification in this decree by consent it would raise a serious question as to whether after that testimony was taken, after the evidence was received, a decree by consent would be within the precaution of the statute.

Now that is not a reason for your Honor to exclude the evidence but from the defendants' point of view it is a reason why the objection, if otherwise valid, is of particular importance.

Now we think that there is no adequate compliance with the minimum standards of temporary injunction proof. If your Honor should even be in doubt about that question, we would ask your Honor to permit us to provide affidavits which would show the broad issues of fact that would have to be determined before your Honor could even consider [fol. 3596] granting a temporary injunction involving this clearance practice so general in the industry and which counsel for the Government says he wants to start destroying now and destroying completely by the time of the final trial.

We feel that this is one of those cases that your Honor has so often considered on the question of whether relief of a temporary character ought to be granted whether a full consideration of the disputed questions of fact would have to be given, and to that end I think your Honor will find it unnecessary to come to that. If your Honor came to a conclusion as to what kind of proof had to be taken we would like to know that. We are hopeful that these objections are sound and if they are sound there is no occasion to give further consideration to the motion at this stage.

Mr. Caskey: If your Honor please, I want very shortly to review the origin of Section 8 and the provision in it that clearance——

The Court: Excuse me just a minute.

Mr. Caskey: When the complaint was filed in 1938 it contained numerous allegations respecting the activities of the defendants in granting clearance, both clearance by concert of action or conspiracy and the individual clearance granted by a single distributor. Likewise the clearance [fol. 3597] granted by a distributor to its own theatres and to theatres said to be affiliated with other distributors was attacked. Those allegations were reframed but substantially re-alleged in the supplemental and amended peti-

tion that was filed in November of 1940. And one of those allegations was that the defendants had violated the law by making clearance agreements which are calculated to suppress competition between exhibitors rather than to protect the distributors' revenue, which is essentially the same statement that was made here this morning.

Now we filed answers denying those allegations and thus an issue was created. That issue was resolved by entering into a decree, a final decree, true by consent, true subject to modification in the manner provided within the decree, but nevertheless a final determination of the issues between the parties as made by the pleadings. Now the agreement, the consent decree says clearance, reasonable as to time, and reasonable as to area, is necessary in the distribution of motion pictures. And clearance is defined as a contract between the distributor and the exhibitor restraining the right of the distributor to itself exhibit or license the exhibition of its picture within the time and the area specified in the contract.

[fol. 3598] Now when that agreement was made the Interstate case had been decided and whatever it held was known to the Attorney General and his associates. At that time Judge Chesnut's opinion in the Westway case had been affirmed by the Circuit Court of Appeals for the Fourth Circuit. So there wasn't any question in the minds of everyone but that this provision in Section 8 correctly stated the then known law.

Now nothing has happened in the five years which have intervened except this remedial machinery has been operating to solve the particular problem that arises between two or more competing theatres, operating now since February of 1940, over four years. There have been over 400 arbitrations. The distributors have placed in funds over a million and a quarter dollars to maintain it, and I may say that they are bearing substantially all of the expense, the cost to the complainant through appeal, which on an average has been less than $45 a case. There has been no proof of any change in economic conditions, any change in law, any change in practice since the agreement was made and embodied in this decree in 1940. Therefore we think that the usual rule that the plaintiff seeking to get a temporary injunction must show cogent proof of emergency applies.

Now one word about these opinions. If they were in [fol. 3599] evidence what would they prove? Well, the first thing they would prove is that in a 106 cases three distinguished lawyers have given of their energy and ability toward the solution of a particular problem and have done it in a manner which is the admiration of everyone who studies it. That they will prove.

Second, they will prove that with respect to clearance there is not the slightest criticism of Section 8 in these 106 reports. They according to my calculation embrace about 111 pages and about 250 words on each page which gets up into the millions of words, but there is not a suggestion that there is anything wrong with Section 8 in the whole bunch. And that is all we are talking about today. It is true they establish that it is the practice in the industry to grant clearance between theatres which are located in the same competitive area even though the amount of the competition is small or slight. That is a fact. That is the universal practice in the industry. It was true in 1940; it is true today. But even there the Government does a little fudging, as they say. For example, one of the illustrations given is a case involving theatres up in Massachusetts—Fitchburg and Gardner and Athol.

Well, it came out in the course of the testimony that four [fol. 3600] of the defendants granted one day clearance to Fitchburg over Gardner and that was the practice. And they gave Athol the same availability. And all that the Appeals Board did was to say to the fifth company which granted seven days instead of one day, "You better go along with the rest and reduce yours to one day."

Now that doesn't establish any violation of law at all.

Now the first thing that these opinions would establish is that the distributors licensed their films sometimes to a subsequent run which charges about the same or occasionally even more than the prior run. Well, there is no significance to that. Take the very first case cited, Canton, New York, and Ogdensburg. Canton of course is the county seat, much the larger town. The other, 15 miles away, was in a university town. It played 14 days later and it charged the same admission price as Canton. I don't know what that establishes as a violation of law. It is just a fact that the exhibitor in operating his theatre in Ogdensburg thought that he could charge the same admission price as the exhibitor operating his theatres in Canton.

And the last thing that is established that would be [fol. 3601] material here is that the distributors grant clearance to theatres affiliated with each other and to independents alike. But there is not the slightest word in all these reports that the clearance which a distributor grants first to its own theatres or second to the theatres affiliated with some other producer is either any longer or greater in area than the clearance which its grants to other first run theatres in other parts of the country. The fact of distinction between the amount or type of clearance granted affiliated theatres and independent theatres is not adverted to once in all these opinions.

We think therefore that your Honor should exclude these reports from evidence and deny the application for the injunction.

The Court: Mr. Wright, how is the injunction that you are asking for—what would it provide?

Mr. Wright: We suggested three possible forms of injunction. Now of course I suppose we have not attempted any detailed discussion of the precise form until we have gotten the decision on the question of the need for additional relief. But with respect to this problem of the affiliated theatre clearance we had proposed a prohibition which would flatly restrain and enjoin the consenting defendants [fol. 3602] from imposing clearance restrictions in favor of each other's theatres until and unless they were first able to make a satisfactory showing that the purpose of that clearance or that that clearance was necessary to protect their revenue as distributors. In other words, that the decision to grant a clearance had not resulted from a desire to protect the theatres owned by each other from independent competition in the form of any exchange of reciprocal privileges, but actually the clearance was imposed in the course of performing a function as distributors.

The Court: Mr. Wright, an injunction is to prevent threatened violations of law as I understand it. Now under our procedure unreasonable clearances are prohibited. There is a good deal of difficulty in determining——

Mr. Wright: If your Honor is referring to the present decree I don't think that is a correct statement.

The Court: I am speaking quite generally, and don't hold me too closely to it because I am not as familiar with the law in this case as you are. But an injunction seeks to prevent a threatened violation of law.

Mr. Wright: Yes.

The Court: Now just what violation of the law is threat-
[fol. 3603] ened here? Under the machinery which we have set up we have a Board which determines whether or not there has been an unreasonable clearance and if there has been one they hand down a decision and as far as I know and believe then reasonable clearance is remedied.

Mr. Wright: The difficulty with that assumption is, your Honor, that these gentlemen are not free to deal with the problem of unreasonable clearance under the law as such. They operate within a very restricted framework which determines the nature of the relief they can grant and which sets up limited standards for determining whether or not unreasonable clearance exists. That is precisely what we are here arguing about—the inadequacy of that framework to permit that Board and those arbitrators to function in a manner which would effectively restrain and prohibit unreasonable clearance which violates the law as distinguished from clearance which——

The Court: That would seem so and I gather from your brief that you want to include such other situations.

Mr. Wright: We want to broaden——

The Court: I mean broaden. That is a better word. You want to broaden the power of the arbitrators.

Mr. Wright: We want to broaden two things—we would [fol. 3604] first broaden the scope of liability itself, and second broaden the means of dealing with the violations once established.

The system that is presently set up of course provides no penalties whatsoever no matter how——

The Court: Would you say this: So far as our present machinery is concerned, in the cases which the arbitrators and the Board have jurisdiction over, that there is no threat of law violation? Is that so?

Mr. Wright: If the Court please, we say there has been a continuous series of law violations.

The Court: Isn't it true that just as soon as it is found that there is an unreasonable clearance that it is remedied? Isn't that true?

Mr. Wright: I think your Honor has to make a distinction between the concept of unreasonable clearance as it is reachable under the existing decree and the term unreasonable clearance as it exists as a matter of law. Our whole argument is based upon the proposition that unreasonable clear-

ance, clearance which is unreasonable as a matter of law, which violates the Sherman Act, is not prohibited by the existing decree and may not be adequately dealt with under the provisions that are in the existing decree.

The Court: That would seem to be an indication that you [fol. 3605] thought that facts which might be unreasonable so far as the arbitrators were concerned or the Appeal Board, that those same facts might not be a violation of the Sherman Act, doesn't it?

Mr. Wright: There isn't any question about that. I think our position with respect to the Appeal Board's decision has been misinterpreted by counsel. We don't suggest that anything the Appeal Board decides is res adjudicata so far as your Honor is concerned on any issue of law whatsoever. They don't sit there, they were not appointed for the purpose of determining what the law is or what it is not. Their sole function, as I understand it,—and I think it clearly appears from the decree—is to sit and review these findings of fact, determine what the facts are in any particular situation, and in their view make an ultimate decision as to whether or not a particular clearance was reasonable or unreasonable as a matter of fact.

Now whether or not the facts as revealed by their decisions constitute violations of law, those are matters which of course are committed exclusively to your Honor for decision, and that is why we offer these simply as evidence and then propose to show that upon a consideration of the facts that have been reported and developed in the course of those [fol. 3606] proceedings there have been a continuing series of law violations which have not been effectively prohibited or restrained by the awards that the arbitrators and the Board have been empowered to make under the limitations of the existing decree. That in no sense is the fault of the arbitration system or the Board. We accept entire responsibility for that because of the limitations in the decree which we assented to at that time but which we assented to for a three-year fixed trial period only.

Mr. Proskauer: With your Honor's permission, I didn't quite understand from what Mr. Wright said whether he is abandoning his claim for an injunction restraining us for unreasonable clearance.

Mr. Wright: No, I am not abandoning it at all.

Mr. Proskauer: You are still asking for that?

Mr. Wright: Yes. One thing more. I want to say this before I sit down.

We had furnished these defendants 30 days in advance of the hearing with a fairly comprehensive statement of our position and evidence. Now I assume the purpose of that was to facilitate the hearing here and so that we would also be notified in advance as to what their evidence would be and they said in their statement they might wish to submit an affidavit or some testimony. I would suppose that before [fol. 3607] we get into full argument on this thing we ought to know what the defendants' proof as distinguished from their argument is going to be, and I think we ought to get to that if there is going to be any.

Mr. Proskauer: I thought we had had full argument.

Mr. Wright: All that I am doing is what I concede to be making an opening statement simply outlining what proof we were going to offer.

The Court: Now Mr. Davis.

Mr. Davis: If the Court please, may I say with great respect to the learned counsel for the Government his opening statement confused me and his supplemental statement has completely obfuscated me. I think I know less of what the Government's position on this motion is than I did before I came into the courtroom.

First as to these exhibits here. I now understand from my friend that they are offered to your Honor not simply to prove that the Appeal Board has found unreasonable clearances to the number of 51 but they are now offered that your Honor may take the recital of facts contained in these opinions as facts proven on this motion and by a consideration of those facts may determine whether there has or has not been a series of violations of the Sherman Law. [fol. 3608] Now that seems to me to broaden the purpose for which counsel desired to offer these opinions beyond anything that I had conceived to be possible, and certainly for the defendants we object to having the recital of facts in these opinions treated as though they were proven in this court—originally proven as facts on which your Honor should adjudicate violation or non-violation of the law.

I take it for granted there is not a defendant here who has not participated in these particular proceedings who would not insist that he had the right to cross-examine the witnesses who appeared if their testimony was to be received against them. And the manifest impropriety of pre-

senting against all of the defendants in solido these investigations as to each particular defendant is enough without more saying to condemn the whole tender so far as the purposes of this whole motion are concerned.

Now when we get to the motion itself and the attitude of the Government, again with the deepest respect, it seems to me a pure play on words. This decree says in terms that clearance, reasonable in time and reasonable in area, is necessary and good. By necessary implication it says that clearance unreasonable in time and area is bad. And to [fol. 3609] correct such infirmity it erects a whole arbitral system.

Now I don't understand my friend attacks the arbitral system at all. I haven't heard from him at all any word that he wants to abolish these arbitrations and this Board of Appeal. On the contrary I think I had understood him to say that it had worked well. If he didn't say that, if he has a contrary view, he stands solitary and alone on that question, because so far as I know there isn't a defendant or counsel or arbitrator or litigant who does not admit that this has been an excellent, operative, just system. What my friend wants is to reverse a formula and that is all there is to it. He wants the decree to be amended to read, "Clearance being a restraint of trade is per se bad, but if reasonable it may become good." Those are the two sides of the shield. The decree says good unless unreasonable. My friend wants by this elaborate motion to make it read clearance is bad unless reasonable. What is the difference? It is merely the reversal of the formula and nothing more, but leading, says the Government, to a shift in the burden of proof.

I have a great deal of respect for the burden of proof just as I used to have a great deal of respect in an earlier and better day for stare decisis. There are certain legal ideolo- [fol. 3610] gies which we part with with great regret, and I don't deny that there is still some vitality left in the burden of proof. There is vitality in the burden of proof on the criminal side of the court because of the presumption of innocence that attends the accused who may sit silent until the Government or the prosecuting officer has made out a complete and perfect case against him. And that burden never shifts. There is the burden of proof in the old-fashioned common law ejectment where the defendant in possession may sit in perfect silence until the plaintiff has proved

a chain of title absolutely perfect in every respect and his inability to meet that burden of proof defeats his recovery. But in the modern equity problem with our new rules for discovery and interrogatories it must be confessed that the burden of proof, which simply means who goes forward first, has lost most of its vitality. It may perhaps influence a wavering mind on the bench, of the jury, or the referee to furnish a makeweight by which ultimate decision may be arrived at and uncertainty dissolved. But between the parties involved it makes precious little difference, and in arbitral systems where the arbitrators sit on it and put their probe into both of the individuals it makes no difference at all except that the complainant must inaugurate the proceeding and set the machinery in motion.

[fol. 3611] Now to accomplish that stupendous reform of having the distributor set the machinery in motion instead of the exhibitor setting the machinery in motion my friend brings forward this portentous motion to amend this decree. And that seems to me the last bit of juice that there is in this orange and it is inconceivable to me that the Court should overleap all the tremendous obstacles to accomplish that reform.

The Court: Anyone else wish to be heard?

Mr. Wright: If the Court pleases, it doesn't seem to me that we are any clearer on this evidentiary point as far as the defendants' evidence is concerned than when I sat down before. Am I to understand that the defendants are resting their case simply on our presentation and relying on obtaining a ruling from your Honor to exclude our evidence? Or do they suppose at some future date when your Honor rules there will be given an opportunity to offer evidence? If the latter is the case I think we ought to have the ruling on the evidence here and now. I had supposed that if the ruling was deferred that they were going to offer what they had to offer. Otherwise I don't see how we can defer——

Mr. Seymour: If your Honor please, I think the matter [fol. 3612] will probably be disposed of by a ruling on this tender to which we have objected on the serious grounds that we have stated to you. I would suggest if your Honor would consider that any part of the weight necessary to be carried had been carried the defendants would want an opportunity to tender evidence on the disputed issues of fact. We would then want to submit these affidavits. If this

evidence is not received and your Honor decides to sustain the objections, because they are so plainly reasonable, there won't be any occasion to burden your Honor with these affidavits. Rather than elaborate the hearing by suggesting that the affidavits be considered along with this ruling I should suppose that that matter ought to await your Honor's ruling.

Mr. Wright: If the Court please there was no occasion whatsoever for us to furnish this elaborate statement of what our position was if we were going to be met here at the hearing with the suggestion that the defendants still can't make up their minds as to what if anything they want to offer until they know what this ruling is going to be. Now it seems to me that it is a useless waste of time to split this proceeding into a possible two hearings by deferring this question of whether or not they shall be permitted to go forward. It seems to me they have to decide now that [fol. 3613] they are willing to take their chances on the record as made or add to it whatever they have.

Mr. Proskauer: Your Honor, I want to add one word to that go forward or take their chances. We are not playing a game here. It is perfectly evident why we are very chary about putting in evidence. We are concerned with the possibility that if evidence is offered here and this consent decree were ever amended so that some theatre owner claiming to be injured will come in and say, "You offered evidence, therefore this consent decree is prima facie against you under Section 5 of the Clayton Law."

We have nothing to conceal. That is why we are walking on eggs a little bit about putting in evidence. I don't think the claim is serious, but somebody might make it and our clients are very sensitive about it and we have a great many treble damage suits to defend and the attorneys are right here in this courtroom looking for bits of help that they might pick up here. Now that being so we are pressing this objection to the offer of the evidence of these reports even though we have discussed them and said to your Honor, "Look them over instead of deciding. See what they really show or don't show. If they don't show any- [fol. 3614] thing exclude them from evidence. That is why we are putting it in that form. All we have got to say about an affidavit is that we have got an affidavit prepared here so that if your Honor admitted these in evidence and indicated that you thought there was any question here

we would like to put before you just the plain evidentiary facts that you are already familiar with as to the way clearance works and what it is, as to the number of prints we make and how they are distributed, and how the composite of prints requires—just those formal things. We don't want to offer it unless we have to do. That is why we are throwing ourselves a little bit on your Honor's consideration to give us an opportunity to mark it hereafter if it becomes necessary. If it is not necessary we don't want to.

Mr. Frohlich: May I say a word?

The Court: Yes.

Mr. Frohlich: I want to make a formal objection at this time to the offer of proof for the Government for the reason that Columbia was never a party.

The Court: May I have it on the record that you represent a non-consenting defendant?

Mr. Frohlich: I represent a non-consenting defendant and on behalf of that non-consenting defendant I want to make a formal objection to the proof offered for the reason that [fol. 3615] Columbia whether rightly or wrongly never wanted to be a party to this decree and never was a party to any of these arbitrations, has never had a chance, as Mr. Davis said, to cross-examine any witnesses or defend itself in any of these proceedings. And for the Government to offer this proof at this time would be tantamount to placing upon Columbia the stigma of having been in some way guilty of wrongful clearance. Now I think that under very elementary rules Columbia should not be bound by that kind of proof and I want to press my objection.

The Court: Isn't there something in that, Mr. Wright?

Mr. Wright: Yes, I think there is, your Honor, except that it is wholly academic at the moment. I don't think we come to any question as to admissibility as to Columbia when we are not seeking any relief against Columbia on this motion. It seems to me that would only arise at a later date in the course of the trial of the suit on the merits.

Mr. Raftery: I didn't think I would say anything until Mr. Wright said he wasn't seeking any relief against Columbia.

Mr. Wright: On this motion.

Mr. Raftery: Every bit of relief he gets against the big [fol. 3616] five he indirectly gets against the little three, because even though we do not participate or have anything to do with the arbitration proceedings when Mr. Caskey

mentioned a few towns such as Fitchburg and said it was cut down one day over Athol, United Artists and Universal have to give the same consideration by indirection. It is for that reason we are opposed to trying one of the important issues of this lawsuit on the merits on a motion. Clearance is an important part of this litigation. Just as some of the legal rules have passed out, as Mr. Davis has so well put it, Mr. Wright wants to pass clearance out of the picture. Forget it. Clearance is an essential part of the business. We had over 2000 contracts last year with clearance on one way or the other. Every one of those is a matter of negotiation just as profits and the other things that go into it. Now for your Honor to try ex parte—I just couldn't draw an affidavit to answer the contentions that he made in this particular situation. We submit he has shown no necessity for an injunction. You have set the case for trial for October. From what Mr. Proskauer has said all the exhibitors are having a field day. There is no necessity now for any injunction. This summary disposition of an issue [fol. 3617] as important as clearance on a motion the only factual support of which being some decisions by an Appeal Board at which not even all the five companies were parties in many and in some there would only be one of them—that is the sole evidence before your Honor to support a summary application to right a decree, and you ask Mr. Wright what type of injunction order would he suggest. It would clearly have to be a don't-beat-your-wife order because there is nothing that could be drawn except that the defendants are restrained from granting unreasonable clearance. He has not cited any cases that need temporary relief now. So we submit on behalf of Universal and United Artists that the motion now should be denied and the case, as your Honor has done, set for trial and we try this issue on the merits. And we actually filed the same objection Mr. Frohlich has to the introduction of these affidavits.

Mr. Casey: In amplification of what has just been said I find that of the 106 decisions in 31 Twentieth Century-Fox was not a defendant, not a party at all. And undoubtedly the same statistics would apply to all the other companies.

The Court: Mr. Wright, I don't think I should decide the question of the admissibility of these exhibits which have [fol. 3618] marked for identification. My impression is that the decisions of the Appeal Board are not proof there has been a violation of the Sherman Antitrust Law.

Mr. Wright: There is no contention on our part that it is.

The Court: Substantially so, isn't it?

Mr. Wright: We merely say that it is at least, certainly, prima facie proof of the facts therein contained as to these defendants who were parties to that proceeding, and for the purpose of this suit, when these men were especially designated to hear and determine these cases and to make these awards and if that arbitration system does not at least serve the function of legitimately bringing to your Honor's attention what is going on in this industry for the purpose of determining what kind — relief we ought to have in this suit, then it has no legitimate function whatsoever. As it is we were willing to consent to its institution and its continuance with that consideration in mind. You must remember that what this system does is to effectively insulate these defendants from these proceedings. To that extent it is very valuable to them and it is well worth the million and a half dollars they have put into it. Actually the arbitrators have no power to punish. All they can do is to [fol. 3619] make an award as to what should be done, as to future conduct. There is no violation of a contempt except a violation of the award occurs. That is a very nice thing for a defendant to have but it does carry at least some corresponding responsibilities. You can't have that system set up to determine those facts on that basis and still it seems to me come in here and say, "Yes, it is all right to have this system and have these awards to protect us from proceedings designed to punish us for violation of the Act but they can't be considered by this Court for the purpose of determining what we have done in order to see whether or not we have violated the Act." If that contention were accepted by your Honor we should move to set that entire system aside very promptly.

Mr. Proskauer: Your Honor, I don't understand my friend. He undertook the burden of showing that we were violating the Sherman Law. As I understood him, first he came in and said he was offering these opinions as proof of that. Now he says he is not offering them as proof of that, and if I follow him what he means is he is not offering them as adjudications but he is offering them to show what the facts they found were so that you can make an independent determination from those facts as to whether we have vio- [fol. 3620] lated the Sherman Law.

I am trying to translate it into language which even the defendants' lawyers can understand. I think at last I have done so.

Our point about that is this: You can't determine a motion on these 51 isolated opinions, whether the unreasonable clearance is to the extent of one day or two days, constitute violations of the Sherman Law. That is involved with countless other questions just as the arbitrators point out.

And further than that, as has been so effectively stated here particularly by Mr. Davis, who is always effective, you just can't assume that where some of those defendants go into an informal arbitration and say, "Well, to get through with this thing we will agree that those are the facts," that if we were trying the serious issue with all of us there as to whether we were committing a quasi criminal offense, as to whether we were violating the Sherman Law—you can't assume that we would let those facts go in in that way. Why that is really an absurdity.

And, if your Honor please, it is a comfortable thing for us not to be threatened with an injunction on vague a thing as unreasonable clearance and it is worth a million and a half dollars to us to do that, but we didn't buy the court [fol. 3621] with that million and a half dollars or buy the Attorney General's office. We put it up because they subject to the Court's approval agreed that by putting it up we were effectively creating a machinery under your Honor's guidance for really handling in a practically common sense way these things which come up from day to day. And the amazing thing to me is that in all my friend's argument he pays no attention to the practical side of this at all. He just ignores the day to day turning of this great machinery. He says, "You can't punish us." What is the use of punishing us? If we make a mistake of four days in a clearance contract and the Appeal Board reduces that clearance by four days what is the point in punishment? Is he so hungry for blood or thirsty for blood that somebody has got to go go to jail if he makes a mistake of four days in a clearance which is immediately corrected by the summary process of this appeal? And I still don't know what he is asking for here. If he is still pressing his claim for the injunction I am sure that that must be out under the considerations that we have brought forth for your Honor's consideration.

That is all I can see he is moving for. He talks about [fol. 3622] modifying the conditions. Just think of the absurdity of the one he claims. Before I can grant a clearance to the biggest theatre in New York which I own—let us assume I own the Rockefeller Center Theatre; I don't—my clients don't; I wish they did—let us assume they own it and they give a first run with clearance of 20 days to that great theatre. My friend is actually so impractical with the cob webs of the Antitrust Division—somebody used the word obfuscate—that before I could give that theatre clearance I have got to come into court and I have got to apply to you and you have got to sit there and give me your permission to give clearance to the Rockefeller Center Theatre. Now I don't like to use the word "nonsense" but really, your Honor, that is it.

Mr. Wright: If the Court please, I repeat that if these decisions of this Board are not to be admissible in this court for the purpose of showing to your Honor what the facts are as to what these defendants have done in those proceedings in which they were involved then that system has no further justification insofar as the Government is concerned.

The Court: Isn't that a pretty big statement? The very purpose of this arbitration plan was this: It is known clearance is something that must stay in this business. I think you can concede that. That is pretty general. [fol. 3623] The great difficulty is that you can't lay down any yardstick; it depends upon which particular case. Now in order to decide where there was unreasonable clearance it was thought as a fair, reasonable and practical matter to submit it to an impartial Board to decide. That is what the purpose of this arbitration and the Appeal Board is—to decide whether or not the clearance is unreasonable. If it is found that it is unreasonable then the defendants ought to change the clearance. Now I don't understand what you would substitute for that.

Mr. Wright: The difficulty of this scheme as it is set up is simply this, your Honor: Had these arbitrators been given the power to consider each claim of unreasonable clearance on its merits and it——

The Court: It seems to me you confuse two things. Perhaps I am confused, I am not sure. But you come here asking for an injunction. This is not a motion to revise

the decree. I think there are some things in this plan of arbitration that might be improved, but that is not before us just now. We are here now on a motion for granting an injunction.

Mr. Wright: That is right, and I take it if the defendants could point to the decree that is now in effect as an [fol. 3624] effective and adequate means of dealing with this problem then we would not be entitled to any further objection.

Mr. Proskauer: That is exactly what we do.

The Court: I would be very much interested—it is perhaps not a legal question—but I have been interested in this industry, had to be for some years now. I would like to know what you would substitute for the present plan of deciding whether there is unreasonable clearance. That is such an important question. I think it is very difficult to get a better answer than we have. If you have a better answer I would be very much interested in hearing it.

Mr. Wright: If the Court please, we have made a very specific concrete suggestion within the limits of the present plan in the petition we filed for modification of Section 8 in August of last year. We there spelled out what we thought ought to be done. In the existing section we said the first thing to be done would be to remove any presumption that clearance in any particular situation is necessary, that might be spelled out in the present phrase of the decree that clearance reasonable as to time and area is essential to the industry. We advocated arguing that clause. We also advocated an express statement to the [fol. 3625] effect that the arbitrator should have the power to abolish all clearance in any situation where he found it to be inequitable regardless of whether or not the theatres were in direct competition with each other or not. As the system now is if you are in the same competitive area it doesn't matter how unreasonable the fact may be that A in that area takes clearance over theatre B, the maximum area that theatre B can get under this section is to be told, "Well, you will still play one day behind theatre A," even if the equities are such that he ought to be playing well ahead of theatre A instead of behind him.

Mr. Proskaue : There is no ground for this statement.

Mr. Wright: From that inequity arises a third limitation in the existing Section 8 which we propose to strike. That is, the present limiting section says that nothing the arbi-

trator did should affect the distributor's right to license any run it shows. As far as we are concerned, and I am sure your Honor will see, if you consider these decisions closely and see what has happened in the industry during this three-year period, that run and clearance are actually inseparable. Clearance merely determines the interval between runs.

The Court: I know that.

[fol. 3626] Mr. Wright: And it is ridiculous to exempt priority of run from any arbitration system which purports to deal with unreasonable clearance. It can't be done and still give effective relief to anybody.

The Court: Those suggestions of yours, Mr. Wright, seem to have more to do with broadening and limiting matters which are referred for arbitration rather than having any bearing on the question of injunction.

Mr. Wright: If the Court please, I repeat, suppose that as a condition to further injunctive relief we show that the existing relief is inadequate doesn't do the job of restraining law violations that it is intended to do—and the comments I just made are directed at that end of demonstrating to you that there are violations of law—there are unreasonable clearances which do violate the law which are being imposed by these defendants every day which cannot be effectively reached and remedied under the setup that we have now got. Now we concede that improvement in the arbitration system as such could probably be had only by consent. The consent is not forthcoming from these defendants for any improvement unless it is conditioned upon further immunity from trial of the main issues of this suit for a substantial period [fol. 3627] of time. That is a condition that the Attorney General has rejected and will not accept. Therefore there is no possibility of improving the existing arbitration provisions by consent, and I might say that in connection with the defendants' concern about the offer of evidence here foreclosing full protection to them from any such future consent decree as might be entered that that is a hazard that really is primarily one for us to determine, and we would not be here asking for this relief or offering this evidence at this time if we hadn't satisfied ourselves completely through these prolonged negotiations that having gone on since November 20, 1943, there isn't any possibility of obtaining adequate relief through consent.

Now that is not a reason—this Section 5 as far as I can see is no reason at all for excluding or failing to rule at this time on the offer of this material that we are offering for your Honor's consideration.

The Court: If I had to do it now I should exclude it. I would like to look into it a little further before I rule against you. That is the only reason I am not ruling now. If you force me to rule now—you can't force me because I am not ready to.

Mr. Wright: If we had the ruling now, as I say, we [fol. 3628] would promptly move to set aside these arbitration proceedings under the decree because in our view the only way we could have justified—the only way we could have ever justified the setting up of a system of settling and arbitrating disputes as a matter of consent decree enforcement, something that has never been heard of before in any Government agency, was on the assumption that we were doing it only on an experimental basis and that further action in the suit could be taken on a consideration of the whole facts which that experiment revealed to the Court. At least whatever might be said about its inadequacy, which we recognized from the start, to deal as fully with violations as contempt proceedings might, that is, in the way of imposing penalties, that it at least brought to the light of day and made a record of the practices that were going on in the industry and the officers of this court appointed to consider and review those practices we assume certainly had the function of supplying your Honor with the data that you would need at the end of the trial period to determine to what extent the activities of these defendants had violated the law and to what extent additional relief might be needed to handle those violations.

[fol. 3629] The Court: Mr. Wright, it seems to me that the proper and fair disposition of this motion at the present time would be this: It would be, if I do receive this in evidence, allow the defendants to file an affidavit and also allow you to file a replying affidavit. I think that would be fair.

Mr. Proskauer: That is right. We will give you a copy of the proposed affidavit immediately.

Mr. Wright: The only objection to that plan is that it defers consideration of our proof. I think it would be appropriate to mark this material now and they could

make their objections and you could consider their objections to our material at the same time you consider our——

Mr. Proskauer: We are not going to offer anything in evidence. We are going to offer an affidavit conditioned on your Honor's receiving this evidence. If you don't receive the evidence we do not ask that you receive the affidavit. We will give a copy to Mr. Wright and we don't want it considered if you exclude the evidence. If you receive the evidence we would like our affidavit considered. And we have a brief from which I was cribbing as I argued which we will put in final shape and give to your Honor tomorrow.

[fol. 3630] (To Mr. Wright): We will give you a proof of it today.

The Court: Does that seem all right?

Mr. Wright: That procedure I think resolves the procedural problem. We would of course like time to reply to this brief which we haven't yet seen.

The Court: Certainly. Now the defendants will file a brief. Now when did you say?

Mr. Proskauer: We will give Mr. Wright a proof of it today. We will give it to him in final form tomorrow. We will file it with your Honor tomorrow.

The Court: You will have your brief tomorrow?

Mr. Proskauer: Yes.

The Court: That is the sixth. Now Mr. Wright, this is your brief, isn't it?

Mr. Wright: That is our main memorandum. It was submitted on February 5. You have had it at hand. The photostatic copy is attached.

The Court: This is it?

Mr. Wright: Correct.

The Court: You have another copy of it, have you?

Mr. Wright: Yes. I would be glad to supply one.

The Court: Now the defendant is submitting briefs [fol. 3631] tomorrow?

Mr. Caskey: Yes, sir.

The Court: And you want to reply to it?

Mr. Wright: Yes, your Honor.

The Court: Now when would you like to reply to it, Mr. Wright?

Mr. Wright: I should suppose 15 or 20 days would be sufficient.

Mr. Proskauer: I thought you were in a hurry.

Mr. Wright: That is about as fast as we can get anything typed.

The Court: Well, Mr. Wright, don't pay any attention to him.

Mr. Proskauer: Well, it is an illustration, your Honor, of the terrible danger that threatens the public that requires a temporary injunction. We would be delighted to give him 20 days or 20 weeks.

The Court: When do you want to file it? That would be the 26th?

Mr. Wright: That will be March 26.

The Court: March 26, is that all right?

Mr. Wright: Yes.

There is one other thing that is still undisposed of and that is this question of pretrial conference.

The Court: I thought that we would dispose of that [fol. 3632] after lunch. It is five minutes after one. Shall we come back here at half-past two?

Mr. Wright: I don't know that there is anything to come back for.

The Court: I don't know what you want.

Mr. Wright: I wanted to get a date set when we could have a pretrial conference and see if we could get an idea of how much time is going to be taken in the trial of this case.

The Court: Tell me what you want and I will try to meet you.

Mr. Wright: May we have some date in April? The early part of April?

The Court: Would you rather do it before these briefs are in?

Mr. Wright: I think it would be better to do it afterward.

The Court: Afterward. Now I think in April I am holding court in the motion term.

Mr. Wright: I suppose that could be done in chambers.

Mr. Proskauer: Oh yes, couldn't we have some date in April in chambers? I may be away in May.

The Court: I have the motion term, and as you all know when a judge is in the motion part he has a good many [fol. 3633] troubles and he doesn't want to add to them.

Mr. Proskauer: Well, we will protect you against the Attorney General as far as we can.

The Court: For the first two weeks in April I am in the motion part and I prefer to have that some other time. How about the latter part of this month?

Mr. Proskauer: (To Mr. Wright) Will you be ready by then?

Mr. Wright: Well, we will be working on this reply brief until the 20th.

The Court: Why not set it down for the same day, March 26th? How about that?

Mr. Wright: March 26th? All right.

The Court: How about that?

Mr. Proskauer: All right, excepting I don't suppose either of us is going to be very ready. I don't think we are going to have this thing analyzed to make it worth the trouble, but I am willing——

Mr. Wright: I would suppose that more than one such conference will be necessary in any event and I would suppose we might as well get started on March 26th. Whatever needs to be done I don't suppose will be done then anyway.

The Court: Monday, March 26th. Put it down at 2:15. So that, Mr. Wright, if that is convenient for you and [fol. 3634] everyone else I have set Monday, March 26th, for this pretrial conference at 2:15 in this room just to have some room designated. This is 1506. But it is quite likely we won't have anything formal to do and we will adjourn to my chambers.

Mr. Wright: Mr. Marcus reminds me there is also pending and undisposed of some objections that we made to some interrogatories directed to us by three of the defendants—I believe Columbia, Universal, and United Artists—which were generally continued for disposition at the time we continued the trial date shortly after we entered the consent decree, and I suppose those should be disposed of at some reasonably early date too.

The Court: Are they before me?

Mr. Wright: They were before you as I recall, your Honor, the last time they were up.

The Court: I don't recall anything about them. I don't know what you want me to do.

Mr. Raftery: Neither does counsel. We have forgotten about them.

Mr. Wright: If you say that we all forget about them that is fine.

Mr. Raftery: You just answer them.

Mr. Wright: We filed objections to these interrogatories and unless counsel is willing to withdraw the interroga-
[fol. 3635] tories why we want the objections disposed of.

The Court: Well, I don't know what they are.

Mr. Raftery: We will look them up and report back on the 26th.

Mr. Wright: All right.

The Court: Is that satisfactory, Mr. Wright?

Mr. Wright: Yes.

Mr. Ernst: If your Honor please, I represent the Society of Independent Motion Picture Producers. They are not as poor as Judge Proskauer's clients; they are doing well. The Society includes Selznick, Goldwyn, Disney, Orson Welles, Walter Wanger, and I represent others. We ask leave to file a brief amicus with respect to the motion that was made today. It is apparent I think to everybody that the independent producer of motion pictures has a direct interest in any restrictions in the market-place which impede the free flow of his commodity to that market-place in violation of the Sherman Law.

Mr. Caskey: If your Honor please, we ask you not to accept the brief. It is not yet in being and so we cannot comment on it. But we have had tender-- to us a brief from another group,——

Mr. Stern: I am appearing——

[fol. 3636] Mr. Caskey: —which contains a great many purported statements of fact, inflammatory and demagogic arguments which are not supported by testimony and should not be received. We think there is no need for briefs amicus when the plaintiff is the Government of the United States.

The Court: I don't think we need any help when we have got five live defendants with eminent counsel.

Mr. Ernst: May I ask if Mr. Caskey is speaking for all five companies?

Mr. Caskey: No.

Mr. Ernst: Or just for his own?

Mr. Caskey: Just for my own.

Mr. Stern: If your Honor please, I represent the Conference of Independent Exhibitors. It is the brief which Mr. Caskey refers to. I think your Honor has a copy.

The Court: It was left in my office——

Mr. Stern: It was left in your office Friday afternoon.

The Court: It was left in chambers when I came up from court. I haven't looked at it at all.

Mr. Stern: With that brief is an application for leave to file it would your Honor and copies of the brief have [fol. 3637] already been served on all the attorneys representing the defendant including a copy for the Government. We think we have a direct interest in this litigation, perhaps a more direct interest than anyone else outside of the defendants themselves. The purpose of this brief, if your Honor please, is to set forth to your Honor the views of the independent exhibitors throughout the United States and to conserve the time of the Court in obviating the submission of a great many briefs and a great many arguments. We represent 21 regional——

The Court: You realize that if you were to be allowed to file a brief there might be a hundred others wishing to do the same thing. How could I grant you the right and not grant everybody the right? Of course as you know the Attorney General is supposed to represent and I think Mr. Wright does ably represent the public and everyone else.

Mr. Stern: We are pretty nearly the everyone else.

Mr. Proskauer: That immediately raises a question of fact. You are not pretty nearly the everyone else. There are thousands and thousands of independent exhibitors who are not you at all and who do not believe in you.

[fol. 3638] Mr. Stern: Those are your own exhibitors. Those are the ones controlled by your——

The Court: Mr. Wright, don't you represent everyone including these defendants?

Mr. Wright: If the Court please, we do in theory but in this particular case I would prefer not to accept the responsibility. We of course try to give effect to all of the views of all of these other people who are vitally interested in the industry. However there are many conflicts between them. It is impossible to give adequate expression to all these various viewpoints that are involved. At the time this consent decree was entered we recognized that fact and your Honor will recall we had a hearing before your Honor to which everyone was invited to express his views with regard to this consent decree. In connection with any proposed modification or additional relief I think it would be quite proper and we think desirable for your

Honor to again receive the views of those who are interested. As I understand it, these people do not seek to intervene. That we might oppose. All they wish to do is to present briefs, and insofar as that is concerned we think it would be a desirable thing for your Honor to have their views before you.

Mr. Proskauer: Your Honor, I could understand counsel [fol. 3639] in good faith asking for leave to file amicus briefs if we were trying this case—if we were deciding the particular issue. But we are just here on a motion for a temporary injunction. That is all there is before you. What is the good of amicus briefs on that? We are going to get into a situation where we have a lot of stuff in these briefs that we are going to have — say things about. Your Honor is not going to know what the facts are. And we are going to say that some things he says are facts and some are not facts. That always happens in amicus briefs. We have a simple motion here.

Mr. Davis: May I make a remark based on what Judge Proskauer has just said?

I have long held the view that after the amoeba the lowest form of animal life is the amicus curiae. Now I have discovered after these long years that the amoeba should be elevated from that low gradation and that the amicus curiae is the lowest of the genus.

Mr. Ernst: Your Honor, if I could reckon the calendar as Judge Proskauer does I would have to agree with them. It seemed to me that when he said that this is just a little temporary thing, all will be disposed of on the second Tuesday of October he was just forgetting the basis of our [fol. 3640] judicial machinery in this country. The pattern of determination of this motion may well determine the pattern of economics in this industry for years to come before there is a final determination pending appeal, and the glib suggestion that it is just temporary is flying in the face of the realities of the market place, a market-place dominated as we contend by five major companies owning brick and mortar——

The Court: You are now being heard. If you wish to argue this I will be glad to hear you.

Mr. Ernst: I am arguing against the position that the amicus curiae is the lower form of amoeba. I am willing to say this:——

The Court: I think I might do this. After recess if you wish to argue this I will be glad to hear you. Recess until 2:15. I wanted to avoid receiving any further briefs.

(Recess to 2:15 p. m.)

[fol. 3641] Afternoon Session

Mr. Ernst: If your Honor please, I hesitate to take the time of the Court because this seems to me such a small matter. There are two applications before you for leave to file amicus briefs. I am talking for only one. If there were 50 or 100 then Judge Proskauer's bewildered plea a thousand that might have to be listened to would carry weight. But there are just the two of us. The brief we will file is for substantial people in the industry. The Government has said that it will be helpful to the Government and to the Court to have such brief.

The Court: Whom do you represent?

Mr. Ernst: I represent the Society of Independent Motion Picture Producers. These are a lower grade in the industry even than the companies called satellites. These people are Selznick, Goldwyn, Orson Welles, Cagney and Disney, who produce pictures and have no theatres and have no distribution system of their own. They are nevertheless of necessity vitally affected by the decree that is now in existence and would be extremely affected in my opinion if the Court should determine that the evidence proffered by the Government is inadmissible and if as a result of that the Government pursued its present intention of then [fol. 3642] asking for a vacation of the consent decree. I am in no position to argue fully on this question because I do not know what evidence will be before the Court. Our brief will take on one nature if you accept the analysis of the arbitrations. We have had in behalf of our clients at considerable expense our own independent analysis of the arbitrations made by competent researchers. I may say parenthetically that within the limitations imposed on the arbitrators there can be no objection, as I see it.

On the other hand when Judge Davis indicated that he knew of no objection to the present situation all I can say is that he is not aware of the very profound objections raised by a score or more of independent producers of substance, of quality and of importance in the market-place.

If the Court should accept the Government's proffer of

evidence and thereupon the affidavit which Judge Proskauer said he has drafted is also before the Court's mind for consideration we would like in our brief in behalf of these independent producers of pictures to address the Court. That we have a position in the situation goes beyond question. We are the lowest of the producers insofar as we are also using the monopoly of copyright referred to by [fol. 3643] Judge Proskauer, but we are in no position to have an accord in regard to price maintenance to which clearance is merely a corollary, and a necessary corollary no doubt in many instances. We are in no position to address ourselves to the operation of the decree and the operation of the restricted market-place today as are these five giants. What we would like the opportunity to do as one, and we understand there is only one other before you, is to submit within ten or twelve days a page proof of our brief to everybody and the final brief on the day when the Government's reply brief is due.

The Court: Well, if there are only two I think I will receive them—give you a chance to be heard. Mr. Myers? Is he here?

(No response.)

Mr. Bickford: Mr. Stern.

The Court: Mr. Abraham L. Myers, the gentleman this morning.

Mr. Wright: I think, if the Court please, that was Mr. Stern who appeared this morning. I believe the gentleman who appeared this morning is Mr. Stern whose name is on the brief submitted by Mr. Myers.

The Court: Is he or his representative present now?

(No response.)

[fol. 3644] The Court: In any event I will allow those two to submit briefs, so that there may be no feeling that they have not been given an opportunity to be heard.

Mr. Seymour: What is your Honor's pleasure about these affidavits? Shall we hand them up now and your Honor hold them until you have decided whether you want to consider them?

The Court: I suppose that is about the best.

Mr. Seymour: We will hand them up to the clerk and furnish the Government with copies.

Mr. Wright: I think they should be marked for identification.

Mr. Seymour: I don't see any occasion that they be marked. These are affidavits that we are submitting on the basis your Honor has indicated this morning. We are not going to offer them in evidence. One never offers affidavits in evidence.

Mr. Wright: Just so they are properly identified.

Mr. Seymour: I will be glad to state what they are. One is an affidavit by James L. Donohue, verified March 2, 1945. The other is an affidavit of J. Noble Braden verified March 5, 1945. And we will furnish you with copies later. [fol. 3645] The Court: There is no objection to them I take it?

Mr. Wright: Well, it is very difficult to say until we have seen them. I have read the affidavit of Mr. Braden and I don't think there is any question about the facts that are set forth. I haven't seen the other affidavit at all. There may be objection on their part.

The Court: Anything further now, gentlemen?

(No response.)

The Court: That is all.

Mr. Wright: I still haven't had the copy of the other affidavit.

Mr. Proskauer: You are going to have an opportunity.

Mr. Wright: And I assume anything we have to say by way of objections to these affidavits may be said in our brief inasmuch as we haven't yet been furnished with the copy of this one.

The Court: They have not been received in evidence yet.

Mr. Wright: That is right.

Mr. Proskauer: May it be understood if we desire to comment on these amicus briefs that we may do so on the same day that the Government files its final brief?

[fol. 3646] The Court: That is on the 26th, isn't it?

Mr. Proskauer: Yes.

(To Mr. Ernst): When are we going to get the page proof?

Mr. Ernst: Ten days I thought.

Mr. Proskauer: Ten days is the 15th. That allows us about ten days.

Mr. Ernst: I will split it in half.

The Court: Anyway as far as advising the Court you may do that on the 26th when we have your briefs.

(Conference at the bench.)

The Court: Mr. Seymour wants to know if you want those affidavits filed in the clerk's office. You don't, do you?

Mr. Seymour: I just think they should be filed with your Honor. If your Honor does not admit the Government's offer you won't have any occasion to consider them and therefore they need not be filed.

Mr. Wright: There is one thing more that we prepared for our own use that you may find helpful, and that is the summary of the 104 decisions which we have prepared and which you may wish to use in connection with our memorandum. (Handing to Court.)

I will furnish copies to counsel (handing to counsel).

[fol. 3647] The Court: Mark these what, Mr. Wright? Summary of Appeal Board decisions?

Mr. Wright: 1 to 104 inclusive.

(Adjourned to March 26, 1945, at 2:15 p. m., for pretrial conference, in Room 1506.)

(Adjourned to October 8, 1945, for trial.)

[fol. 3648] In the District Court of the United States

[Title omitted]

Expediting Certificate of the Attorney General of the United States—Filed June 13, 1945

To the Clerk of the District Court of the United States for the Southern District of New York:

I, Francis Biddle, Attorney General of the United States, hereby certify that the above entitled case now pending in said court is a civil action brought by the United States of America against Paramount Pictures, Inc. and other defendants named in the complaint herein, under the Act of Congress approved July 2, 1890 (26 Stat. 209), entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, and that, in my opinion, said case is of general public importance.

I, therefore, request that, complying with the provisions of the Act of Congress entitled "An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July second, eighteen [fols. 3649-3651] hundred and ninety, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies'; "An Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven; or any other Acts having a like purpose that may hereafter be enacted," approved February 11, 1903 (32 Stat. 823), as amended by the Act of Congress approved April 6, 1942 (56 Stat. 291); you file this certificate among the records of the above entitled case and immediately furnish a copy thereof to the senior Circuit judge (or in his absence, the Presiding Circuit Judge) of the Second Circuit, to the end that three judges in such circuit, of whom at least one shall be a circuit judge, be designated to hear and determine said case, and that said case be assigned for hearing at the earliest practicable date and in every way expedited, as provided in said act of February 11, 1903, as amended.

(S.) Francis Biddle, Attorney General.

Washington, D. C., June 12th, 1945.

[fol. 3652] IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Equity No. 87-273

UNITED STATES OF AMERICA, Plaintiff,

against

PARAMOUNT PICTURES, INC., PARAMOUNT FILM DISTRIBUTING CORPORATION; Loew's, Incorporated; Radio-Keith-Orpheum Corporation; RKO Radio Pictures, Inc.; Keith-Albee-Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros. Pictures, Inc.; Vitagraph, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; National Theatres Corporation; Columbia Pictures Corporation; Screen Gems, Inc.; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Pictures Company, Inc.; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation, Defendants.

OPINION—June 11, 1946

Before:

AUGUSTUS N. HAND, *Circuit Judge,*

HENRY W. GODDARD and JOHN BRIGHT, *District Judges.*

This is a suit to secure equitable relief against the alleged domination and control by the defendants and their affiliates of the motion picture industry in contravention of Sections 1 and 2 of the Sherman Anti-Trust Act. Decree granting partial relief to plaintiff.

Wendell Berge, Assistant Attorney General; Robert L. Wright, Philip Marcus, Elliott H. Meyer, and John R. Nies-[fol. 3653] ley, Special Assistants to the Attorney General; Frank W. Gaines, Jr., Gerald A. Herrick, Robert B. Hummel, Harold Lasser and Horace T. Morrison, Special Attorneys for United States of America.

Simpson Thacher & Bartlett, Attorneys for Paramount Defendants; Whitney North Seymour, Louis Phillips, Albert C. Bickford and Armand F. MacManus, Counsel.

Davis Polk Wardwell Sunderland & Kiendl; J. Robert Rubin, Attorneys for Defendant Loew's, Inc.; John W.

Davis, J. Robert Rubin, C. Stanley Thompson, Benjamin Mcniker and S. Hazard Gillespie, Jr., Counsel.

George S. Leisure, Ralstone R. Irvine, Granville Whittlesey, Jr., and Gordon E. Youngman, Attorneys for Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, RKO Proctor Corporation and RKO Midwest Corporation; Roy W. McDonald, and Donovan Leisure Newton & Lumbard, Counsel.

Joseph M. Proskauer and Robert W. Perkins, Attorneys for the Warner Defendants; Joseph M. Proskauer, Robert W. Perkins, J. Alvin Van Bergh and Howard Levinson, Counsel.

Dwight, Harris, Koegel & Caskey, Attorneys for Twentieth Century-Fox Film Corporation and National Theatres Corporation, Defendants; John F. Caskey and Frederick W. R. Pride, Counsel.

Schwartz & Frohlich, Attorneys for Defendant Columbia; Louis D. Frohlich, Arthur H. Schwartz, Irving Moross and Max H. Rose, Counsel.

Charles D. Prutzman, Attorney for the Universal Defendants;

[fol. 3654] O'Brien, Driscoll & Raftery, Attorneys for the Defendant United Artists Corporation; Edward C. Raftery, Arthur F. Driscoll, Chas. D. Prutzman, George A. Raftery and Adolph Schimel, Counsel.

AUGUSTUS N. HAND, *Circuit Judge:*

The United States brought suit under Section 4 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", commonly known as the Sherman Act, in order to prevent alleged violations by the defendants of Sections 1 and 2 of that Act.

The following is a general description of the defendants:

1. (a) Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 1501 Broadway, New York, New York, and is engaged in the business of producing, distributing and exhibiting motion pictures, either di-

rectly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

(b) Paramount Film Distributing Corporation, a wholly owned subsidiary of Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1501 Broadway, New York, New York, and is engaged in the distribution branch of the industry.

2. Loew's, Incorporated, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1540 Broadway, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

3. (a) Radio-Keith-Orpheum Corporation is a corporation organized and existing under the laws of the State of [fol. 3655] Delaware, with its principal place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries.

(b) RKO Radio Pictures, Inc., a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the production and distribution branch of the industry.

(c) Keith-Albee-Orpheum Corporation is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures. Approximately 99% of its common stock and 33% of its preferred stock are held by Radio-Keith-Orpheum Corporation.

(d) RKO Proctor Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of New York, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures.

(e) RKO Midwest Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Ohio, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures.

4. (a) Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 321 West 44th [fol. 3656] Street, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

(b) Vitagraph, Inc., a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and is engaged in the business of distributing motion pictures.

(c) Warner Bros. Circuit Management Corporation, a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and, among other things, acts as booking agent for the exhibition interests of the said Warner Bros. Pictures, Inc.

5. (a) Twentieth Century-Fox Film Corporation is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 444 West 56th Street, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

(b) National Theatres Corporation is owned and controlled by Twentieth Century-Fox Film Corporation, and is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 2854 Hudson Boulevard, Jersey City, New Jersey, and is a holding company for the theatre interests of the said Twentieth Century-Fox Film Corporation.

6. (a) Columbia Pictures Corporation is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 729 Seventh [fol. 3657] Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

(b) Screen Gems, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of California, with a place of business at 700 Santa Monica Boulevard, Hollywood, California, and is engaged in the business of producing motion pictures.

(c) Columbia Pictures of Louisiana, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of Louisiana, with a place of business at 150 South Liberty Street, New Orleans, Louisiana, and is engaged in the business of distributing motion pictures.

7. (a) Universal Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries.

(b) Universal Pictures Company, Inc., a subsidiary controlled by Universal Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of producing motion pictures.

(c) Universal Film Exchanges, Inc., a wholly owned subsidiary of Universal Pictures Company, Inc., is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of distributing motion pictures.

[fol. 3658] (d) Big U Film Exchange, Inc., a wholly owned subsidiary of Universal Corporation and Universal Pictures

Company, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of distributing motion pictures.

8. United Artists Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 729 Seventh Avenue, New York, New York, and is engaged in distribution of motion pictures in various parts of the United States and in foreign countries.

The five major defendants—Paramount Pictures, Inc., Loew's, Incorporated, Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc., and Twentieth Century-Fox Film Corporation and their subsidiaries—were charged in the amended and supplemental complaint with combining and conspiring unreasonably to restrain trade and commerce in the production, distribution and exhibition of motion pictures and to monopolize such trade and commerce in violation of the Sherman Act. The three minor defendants —Columbia Pictures Corporation, Universal Corporation, and their subsidiaries, which are producers and distributors, and not exhibitors, and United Artists Corporation, which is a distributor only, were likewise charged with combining and conspiring with the five major defendants and with each other unreasonably to restrain and to monopolize trade and commerce in motion pictures. As it appeared upon the trial that there was no violation of the Sherman Act in respect to production of motion pictures and that there was on the contrary active competition in production, the charge in respect to production was formally abandoned by the plaintiff. The issues therefore are whether there have been illegal restraints or monopolization in the distribution and exhibition of motion pictures.

[fol. 3659] The plaintiff contends that an illegal conspiracy and monopoly were effected by: (1) concertedly fixing the license terms before the licensees have had a fair opportunity to estimate the value and character of the films licensed and before such films were completed or shown; (2) concertedly fixing the run, clearance, and minimum admission price terms on which an exhibitor may show pictures through license agreements covering periods of a year or more; (3) concertedly conditioning the licensing of one film or group of films upon the licensing of another film or group

of films and by conditioning the licensing of films in one theatre or group of theatres upon the licensing of films in other theatres or group of theatres; (4) concertedly discriminating with respect to the license terms granted to theatres in large circuits because such theatres are part of a circuit. The means of such discrimination are said to be the licensing for exhibition in theatres of the five defendant exhibitors of runs ahead of those granted to competing independent exhibitors, and the continuance of these prior runs from season to season to the prejudice of independent exhibitors. As a result independent exhibitors are systematically excluded from the opportunity to procure preferred runs of pictures distributed by the defendants in the localities in which defendants' theatres operate and at times refused any run at all in order to protect defendants' theatres from competition.

It is further charged by the plaintiff that the distributor-exhibitor defendants have combined with each other: (1) by conditioning the licensing of film distributed by one defendant in theatres operated by another upon the licensing of films distributed by the latter in the theatres operated by the former; (2) by excluding independently produced films from affiliated theatres and by excluding unaffiliated exhibitors from competing with first run or other run theatres in cities and towns where affiliated theatres are located; (3) by excluding unaffiliated exhibitors from operating theatres on the same run as affiliated exhibitors; (4) by using the first and early runs of affiliated theatres to control the film [fol. 3660] supply, runs, clearances and admission prices of operators of competing unaffiliated theatres in cities and towns in which affiliated theatres are located; (5) by pooling or otherwise sharing with each other the profits of affiliated theatres owned or controlled by two or more exhibitor defendants located in the same competitive area and frequently by together operating on the same run in cases where they would be in competition with one another except for such pooling or profit sharing agreements; (6) by effecting a division of the territory of the entire United States among them for theatre operating purposes.

The amended and supplemental complaint prays: (1) That each of the contracts, combinations and conspiracies in restraint of trade, together with attempts to monopolize the same, be declared illegal; (2) that the defendants and their subsidiaries be perpetually enjoined from continuing to

carry out attempts at monopolization and all restraints of trade in distribution and exhibition of motion pictures; (3) that a nation-wide system of impartial arbitration tribunals, or such other means of enforcement as the court may deem proper, be established in order to secure adequate enforcement of whatever general and nation-wide prohibitions of illegal practices may be contained in the decree; (4) that the five major defendants and their subsidiaries be directed to divest themselves of all interest and ownership, both direct and indirect, in any theatres which the court shall find to have been used by one or more of them unreasonably to restrain trade and commerce in motion pictures.

After the amended and supplemental complaint was filed, the plaintiff and the five major defendants and their subsidiary corporations that were parties to the suit, executed a written consent to the entry of a decree by the District Court, signed November 20, 1940. A decree was made in accordance with the consent reciting that no testimony had been taken, that no provision of the decree should be construed as an admission or adjudication that any of the plaintiff's charges were true, or that the consenting defendants [fol. 3661] had violated any law, or that the doing or the failure to do any of the acts or things enjoined or directed to be done would constitute a violation of law.

The decree enjoined the consenting defendants as follows:

(1) No distributor defendant shall license feature motion pictures for public exhibition within the United States at which an admission fee is to be charged until the feature has been trade shown within the exchange district in which the exhibition is to be held.

(2) No distributor defendant shall offer for license or shall license more than five features in a single group. The license of one group of features shall not be conditioned upon the licensing of another features or group of features, nor shall any distributor defendant require an exhibitor to license shorts, reissues, westerns, or foreigns as a condition of licensing other features. Disputes as to violation of these provisions shall be subject to arbitration. The power of the arbitrator shall be limited to a determination of whether the offer to license or the license was conditioned and, if found to be conditioned, to imposing a penalty against the distributor of not to exceed $500.

(3) No license for features to be exhibited in theatres located in one exchange district shall include theatres located in another exchange district.

(4) No distributor defendant shall refuse to license its pictures for exhibition in an exhibitor's theatre on some run to be designated by the distributor upon terms and conditions fixed by the distributor, if the exhibitor can satisfy reasonable minimum standards of theatre operation and is reputable and responsible, unless the granting of a run on any terms will have the effect of reducing the distributor's total film revenue in the competitive area in which such exhibitor's theatre is located. Controversies arising from a complaint by an exhibitor for violation of the foregoing provision shall be subject to arbitration under which [fol. 3662] an award based on a finding of violation shall direct the distributor to offer its pictures to the complainant on a run to be designated by the distributor, and upon terms fixed by the distributor, which are not calculated to defeat the purposes of this subdivision.

(5) Controversies arising from the complaint of an exhibitor that a feature licensed by a distributor defendant for exhibition in a particular theatre is generally offensive in the locality on moral, religious, or racial grounds shall be subject to arbitration, and, if the feature shall be found to be thus offensive, an award shall be made cancelling the license in so far as it relates to the exhibition of the feature in that theatre.

(6) Controversies arising upon the complaint of an exhibitor that the clearance applicable to his theatre is unreasonable shall be subject to arbitration. Reasonable clearance as to time and area was stipulated and held by the consent decree to be essential to the distribution and exhibition of motion pictures. In determining whether a clearance complained of is unreasonable the arbitrator should consider the historical development of clearance in the area, the admission price of the theatres involved; their character, location, and type of entertainment; the rental terms and license fees paid by them; the extent to which they compete for patronage, and all other business considerations except affiliation of the theatres with a distributor or with a circuit of theatres. If the clearance be found unreasonable, the award shall fix the maximum clearance between the theatres involved, which may be granted in licenses

thereafter entered into by a distributor that is party to the arbitration. The award may also fix, subject to the provisions of Section XVII of the consent decree, such maximum clearance under any existing franchise, i.e., a licensing agreement, or a series of licensing agreements, covering more than one motion picture season and covering the exhibition of pictures released by the distributor during the [fol. 3663] entire period of the agreement. Nothing contained in this subdivision, nor any award in arbitration, shall restrict the exhibitor's right to license for any theatre any run which it is able to negotiate, nor shall restrict the distributor's right to license any run which it desires to grant, nor to license the exhibition of any special feature under a contract the terms of which, including provisions for clearance, are applicable only thereto.

(7) Controversies arising upon a complaint by an independent exhibitor that a distributor defendant has arbitrarily refused to license its features for exhibition on the run requested by the exhibitor in one of the latter's theatres shall be subject to arbitration, but the making of any award is to be subject to certain specified conditions and no award made shall affect the license to exhibit any features then under license, but only future licenses.

(8) For three years after the entry of the decree, the consenting defendants are to notify the Department of Justice of any legally binding commitment for the acquisition of any theatre or theatres. During such period, each defendant is to report monthly the changes in its theatre position, together with a statement for the reason of such changes. For three years following the entry of the decree, no consenting defendant shall enter upon a general program of expanding its theatre holdings. Nothing shall prevent any such defendant from acquiring theatres or interests therein to protect its investment or its competitive position or for ordinary purposes of its business.

(9) The decree shall not be construed to limit, impair or alter the right of a distributor to license the exhibition of motion pictures, subject to such terms as may be satisfactory to it, (a) in any theatre in which, or in the proceeds of which it is directly or indirectly interested; (b) in any theatre an interest in which of not less than 50% is acquired after the date of the decree and which it owns at the time

of such license, and (c) in any theatre of which a company [fol. 3664] in which the defendant owned not less than 42% of the common stock at the date of the decree and at the time of such license acquires after the date of the decree and owns at the time of such license a financial interest of not less than 50%.

(10) Except as otherwise expressly and specifically provided in the decree, nothing therein shall be construed to limit the right of any distributor to select its own customers, bargain with them in accordance with law, or negotiate with or license to or accept any offer from any exhibitor to license its motion pictures or any number thereof, upon such terms and conditions as it deems advisable or to its best interests.

(11) For a period of three years after the entry of the consent decree the plaintiff shall not seek either in this or any other action against the consenting defendants to divorce the production or distribution of motion pictures from their exhibition or to dissolve any defendant or any corporation in which it has directly or indirectly a substantial stock interest and which is engaged in the exhibition of motion pictures, or holds directly or indirectly a substantial stock interest in any corporation so engaged, or to dissolve or break up any circuit of theatres of any such defendant or of any such corporation, or to require any such defendant, corporation or circuit to divest itself of its interests or any thereof in motion picture theatres in which it had an interest at the time of the entry of the decree.

(12) The method and conditions of and the procedure for the arbitration of controversies and the powers of an appeal board created by the court to entertain appeals from the arbitration tribunal are set forth in the decree.

(13) Jurisdiction is retained by the decree for the purpose of enabling any parties to apply to the court at any time more than three years after the date of the entry for any modification thereof.

Tho three minor defendants and their subsidiaries did not consent to the decree of November 20, 1940, presumably be- [fol. 3665] cause of their opposition to the provisions requiring trade-showing and prohibiting block-booking of groups of more than five films. It was provided that if the plaintiff did not secure the entry of a decree against the three minor

defendants before June 1, 1942, the consenting defendants were to be released from those provisions. Such a decree was in fact not entered by the specified date, and accordingly the sections of the decree regarding trade-showing and block-booking have lapsed. Nevertheless, according to the testimony, the consenting defendants have continued to comply with them.[1]

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[1] The following are definitions of terms used in this opinion:

Block-booking—The practice of licensing, or offering for license, one feature, or group of features, upon condition that the exhibitor shall also license another feature or group of features released by the distributor during a given period.

Clearance—The period of time, usually stipulated in license contracts, which must elapse between runs of the same picture within a particular area or in specified theatres.

Exchange District—An area in which an office is maintained by a distributor for the purpose of soliciting license agreements for the exhibition of its pictures in theatres situated throughout the territory served by the exchange and for the physical distribution of such films throughout this territory.

Feature—Any motion picture, regardless of topic, the length of *of* the film of which is in excess of 4000 feet.

Formula Deal—A licensing agreement with a circuit of theatres in which the rental price of a given film is measured for the circuit as a whole by a specified percentage of the picture's national gross.

Franchise—A licensing agreement, or series of licensing agreements, entered into as part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of the agreement.

Independent—A producer, distributor, or exhibitor, as the context requires, which is not a defendant in this action or a subsidiary or affiliate of a defendant.

Master Agreement—A licensing agreement, also known as a "blanket deal," covering the exhibition of films in a number of theatres, usually comprising a circuit.

Motion Picture Season—A one-year period beginning about September 1 of each year.

[fol. 3666] Counsel for the five major defendants and their subsidiaries contend that the consent decree has, in some respects at least, the effect of a final judgment which may not be modified. But we cannot see how such a position is consistent with the language of Section XXIII (d), which permits "* * * any of the parties to this decree to apply to the Court at any time more than three years after the date of the entry of the decree for any modification thereof." That period has expired, and therefore everything relating to rights under and remedies for violation of the Sherman Act is, therefore, open for consideration, even as between consenting parties; and certainly nothing has hitherto been decided which affected the non-consenting parties. It would seem to follow that we cannot bind any parties to subject themselves to the arbitration system or the board of appeals set up in aid of it without their consent, even though we may regard it as desirable that such a system, in view of its demonstrated usefulness, should be continued in aid of the decree which we propose to direct.

The evidence has established various infractions of the Sherman Act on the part of each of the defendants which we shall proceed to discuss.

Price-fixing

The defendants who have granted moving picture licenses have fixed minimum admission prices which the exhibitor agrees to charge irrespective of whether it is to pay a flat rental or a percentage of the theatre receipts. It is said that these minimum admission prices are in general only those currently charged by the exhibitors and that they are placed in the licenses in order to assure the distributor of a mini-[fol. 3667] mum revenue when it licenses upon a percent-

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Road-show—A public exhibition of a motion picture in a limited number of theatres, in advance of its general release, at admission prices higher than those customarily charged in first-run theatres in the areas where they are located.

Runs—The successive exhibitions of a motion picture in a given area, first-run being the first exhibition in that area, second-run being the next subsequent, and so on.

Trade-showing—A private exhibition of a film prior to its release for public exhibition, as required by Section III of the consent decree.

age basis, and also to assure a continuation of the conditions which moved it to grant a given run to the exhibitor.[2] Whatever the reason, the various licensing defendants have agreed with their licensees to a system which determines minimum admission prices in all theatres where motion pictures licensed by them are exhibited. In this way are controlled the prices to be charged for most of the motion pictures exhibited either by the defendants, or by independents, within the United States. That the eight defendants distribute most of the features is evident from the record. For example, during the 1943-44 season the eight defendants distributed about 77.6% of all features nationally distributed except "westerns" and low cost productions, and even if the latter inferior and non-competitive pictures are included, they distributed 65.5%. See Plaintiff's Exh. 426; Record p. 2400. The control of distribution closely resembles that appearing in *Goldman Theatres, Inc.*, v. *Loew's, Inc.*, 150 F. 2d 738, 744-5 (C. C. A. 3), where the court said:

> "Defendants control the production and distribution of more than 80% of feature pictures in this country, and no exhibitor can successfully operate without access to defendants' product."[3]

The licenses are in effect price-fixing arrangements among all the distributor-defendants, as well as between such defendants individually and their various exhibitors. Such combinations we hold to be forbidden by the Sherman Act. [fol. 3668] The exhibits submitted in this case contain

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[2] That the distributor-defendants have more than merely a passive interest, as they claim, in the maintenance of specified minimum prices is shown by their inclusion in the licenses of provisions for severe penalties if less than those prices are charged. Some licenses provide that if the schedule of minimum prices is violated, all existing licenses of the distributor for that theatre may be cancelled at the option of the distributor; other licenses provide that the particular license may be cancelled or that the exhibitor's clearance over subsequent runs be greatly reduced. See Plaintiff's exhs. 275-290.

[3] The defendants in the *Goldman* case were substantially the same as those here, except the Universal Corporation was there eliminated by agreement.

numerous express agreements between the various distributing defendants and their licensees stating the minimum admission prices which licensees are required to maintain in showing the distributors' pictures in the areas concerned. The agreements are not only between the distributor-defendants and other defendants owning theatres, but also between the distributor-defendants and independent theatre owners. A correlation of these agreements shows that in many instances the minimum prices set forth in the license agreements by the various defendants are in substantial conformity. Indeed, it is conceded in the joint brief filed on behalf of Loew's, Paramount, Warner, RKO and Twentieth Century-Fox that the admission prices included in licenses of the various distributor-defendants are in general uniform, being the usual admission prices currently charged by the exhibitors. At pages 31-2 of the joint brief it is stated:

> "The testimony shows that it is the general practice of all the distributors, whether dealing with independent exhibitors or affiliated ones, to include a provision in the license agreement that the exhibitor shall not charge less than a specified minimum admission price during the exhibition of the particular picture or pictures licensed. * * * The minimum admission price included in the license is not one which the distributor dictates, but is the usual admission price currently charged by the exhibitor. (R. 433, 718, 968, 999, 1382-3). It is the practice of exhibitors to charge the same scale of admission prices over a period of time and not to change them according to whose pictures are being exhibited or according to any fluctuations in the type of picture."

A similar statement is made at page 18 of the brief of Columbia, and the brief of United Artists and Universal appears to argue on the same assumption at pages 24-39.

It does not seem important whether the distributor was the more controlling factor in determining the minimum admission prices. Whether it was such a factor or merely [fol. 3669] acceded to the customary prices of the exhibitors, in either event there was a general arrangement of fixing prices in which both distributors and exhibitors were involved. But it is plain that the distributor did

more than accede to existing price schedules.[4] The licenses required them to be maintained under severe penalties for infraction, and the evidence shows that the distributors in the case of exceptional features, where not satisfied with current prices, would refuse to grant licenses unless the prices were raised.[5] Moreover, the distribu- [fol. 3670] tors, when licensing on a percentage basis, were interested in the prices charged and even when licensing for a flat rental were interested in admission prices to be charged for subsequent runs which they might license on a percentage basis. Likewise all of the five major defendants had a definite interest in keeping

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[4] Reagan, vice-president in charge of distribution and sales for Paramount, testified as follows:

"Q. Well, does that (the admission price) fix his right to a particular run or to clearance? A. It would have an influence upon the run and clearance, yes sir."

* * * * * *

"Q. Why would you be interested in the minimum admission price or the admission price charged by the exhibitor in connection with determining what run you would negotiate for? A. Because the admission price that he charges determines the film rental that I can earn for my pictures." Record pp. 718-9.

See also testimony of Kupper in charge of distribution organization of RKO. Record p. 1084.

[5] Testimony of John J. Friedl, president of Minnesota Amusement Company—the stock of which is owned by Paramount, was as follows:

"Q. Are there occasional instances of special attractions where there is a negotiation as to a higher admission price with the distributor? A. That has come up on several occasions. In the case of the picture 'Woodrow Wilson', and several other pictures, they have been released by the distributors as road show attractions, and in those cases the distributors insisted upon road show prices, and it was the option of the purchaser, or the theatre, to buy or not to buy those pictures at those prices; but if he expected to play the picture at that time, he would have to charge such admission price.

up prices in any given territory in which they owned theatres, and this interest they were safeguarding by fixing minimum prices in their licenses when distributing their films to independent exhibitors in those areas. Even if the licenses were at a flat rate, a failure to require their licensees to maintain fixed prices would leave them free by lowering the current charge to decrease through competition the income in the licensors' own theatres in the neighborhood. The whole system presupposed a fixing of prices by all parties concerned in all competitive areas.

The similarity of specified minimum prices prescribed for the same theatres in the distributor-defendants' contracts of license is shown by the following table collated from exhibits in evidence.[6] The exhibits used to prepare

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"Q. And if he was not willing to advance his admission price to meet the distributor's terms, he had the opportunity to play this picture on regular run, is that right? A. At a later date, that is correct.

"Q. Is the provision for that minimum admission price included not only in license contracts for first-run exhibition but also for subsequent-run exhibition? A. Yes, I think it applies in all cases.

"Q. Is it included in license contracts for percentage pictures and also for flat rental pictures? A. Yes, sir.

"Q. Where the admission price is included for subsequent-run exhibition, does your answer with respect to who determines the admission price apply to that as well? A. That is correct. But, of course, it is reasonable to assume, to understand, that in setting our admission prices, we do not do that on an arbitrary basis because it is reasonable to expect that the larger theatres playing the first-runs would get the maximum price for the protection of the distributor and the producer. And in the secondary houses the prices are less.

"Q. That is, generally speaking, the first-run houses charge a higher price than subsequent-run, and then the prices step down among the runs? A. That is correct." Record p. 1000.

[6] This table is derived from Plaintiff's Exhibits 41, 42, 57 (1-49), 82, 94, 126, 127, 128, 139, 365, 369. In most of the exhibits there was no indication as to whether the

[fol. 3671] the table contained answers of the defendants to plaintiff's interrogatories about the first block of five features licensed for the 1943-44 season by each of the five major distributor-defendants, and about the first five pictures licensed by each of the three minor defendants, and about that picture of each defendant which during the season received the most billings in the United States.

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admission price given included or excluded taxes. When this information was given in the exhibits, it is stated in the table as "tax incl.", or "tax excl." The word "none" is used to mean that though a license was in evidence, no admission price was specifically stated in the contract, either through inadvertence or on the understanding that the admission prices currently being charged or contained in previous licenses would be continued. Record pp. 433, 724, 782, 1082, 1211. The symbol "x" is used to indicate that no license of that distributor for that particular theatre was in evidence.

Theatre	City, State	Paramount	Loew's	Warner	RKO	Fox	Col.	U. A.	Univ.
Sneicer	Akron, Ohio	30¢ tax excl.	27¢	30¢	30¢	x	x	30¢	x
Bailey	Buffalo, N. Y.	30¢	x	30¢	none	27¢	29¢	none	x
Liberty	Covington, Ky.	28¢ tax excl.	x	33¢ tax incl.	none	x	x	x	x
Madison	Covington, Ky.	28¢ tax excl.	28¢	x	none	28¢	x	x	x
LaSalle	Niagara Falls,	30¢ tax incl.	27¢	x	none	27¢	x	x	x
Paramount	Akron, Ohio	20¢ tax excl.	22¢	25¢	none	20¢	x	25¢	x
Capitol	x 30¢	x	x	x	Cleveland, Ohio	30¢	27¢	35¢	30¢
Shaker	Cleveland, Ohio	35¢ tax excl.	x	35¢	x	35¢	x	x	x
Heights	Cleveland, Ohio	30¢ tax excl.	27¢ tax incl.	30¢	none	30¢	x	x	x
Senate	Detroit, Mich.	x	37¢	35¢	none	35¢	x	none	x
Ritz	Baltimore, Md.	x	25¢	28¢ tax incl.	none	25¢	x	none	25¢
Vilma	Baltimore, Md.	x	25¢	28¢	none	25¢	x	none	x
Centre	Baltimore, Md.	x	30¢	33¢ tax incl.	x	30¢	x	x	30¢
Hampden	Baltimore, Md.	x	x	x	x	27¢	x	27¢	25¢
Columbia	Baltimore, Md.	x	25¢	28¢	none	25¢	x	x	25¢
Broadway	Baltimore, Md.	x	27¢	x	x	27¢	x	27¢	25¢
Apollo	Baltimore, Md.	x	25¢	x	x	27¢	x	25¢	25¢
Irvington	Baltimore, Md.	x	x	28¢	25¢	25¢	x	x	25¢
Montevista	Cincinnati, Ohio	30¢	30¢	x	33¢	x	x	30¢	x
20th Century	Cincinnati, Ohio	29¢ tax excl.	30¢	x	30¢	x	x	30¢	x
Jackson	Cincinnati, Ohio	29¢ tax excl.	x	x	x	x	x	30¢	x

[fol. 3672]

Esquire	Cincinnati, Ohio	29¢ tax excl.	x	x	x	x	x	30¢	x
Sunset	Cincinnati, Ohio	29¢ tax excl.	x	x	x	x	x	30¢	x
Westwood	Cincinnati, Ohio	29¢ tax excl.	x	x	x	x	x	30¢	x
Lawrence	New Haven, Conn.	27¢	27¢	33¢	27¢	27¢	x	25¢	x
Westville	New Haven, Conn.	30¢	30¢	33¢	none	30¢	x	30¢	x
Pequot	New Haven, Conn.	30¢	30¢	33¢	30¢	x	x	33¢	x
Whalley	New Haven, Conn.	30¢	30¢	33¢	none	30¢	x	30¢	x
Hamilton	Indianapolis, Ind.	35¢	x	35¢	35¢	35¢	x	x	x
Sunshine	Albuquerque, N. M.	none	40¢	x	42¢	40¢	30¢	x	x
Rio	Appleton, Wisc.	40¢	46¢	none	none	45¢ tax incl.	none	x	46¢ plu 9¢ taxs
Rex	Beloit, Wisc.	36¢	27¢	40¢	35¢	36¢ tax incl.	35¢	x	42¢ plus 8¢ tax
Capitol	Charleston, W. Va.	x	40¢	x	40¢	x	x	x	x
Albee	Huntington, W. Va.	40¢	40¢	34¢	35¢	40¢	x	x	40¢
Reed	Alexandria, Va.	35¢	35¢	39¢tax incl.	none	35¢	37¢	x	35¢
Rosna	Norfolk, Va.	27¢	27¢	x	x	x	x	x	
Flynn	Burlington, Vt.	25¢	36¢	x	35¢	40¢	x	x	xx
Gloria orRiviera	Charleston, S. C.	40¢	40¢	44¢	27¢	40¢	15¢	x	35¢
Stadium	Woonsocket, R. I.	40¢	40¢	x	none	x	x	x	x
Bijoux		x	x	x	44¢	35¢	35¢	x	30¢

It is apparent from the foregoing that there was great similarity and in many cases identity in the minimum prices fixed for the same theatre in the licenses of all the defendants. Where there was a marked difference in price, as for example in the admissions specified by RKO, Columbia and Universal, in a theatre in Charleston, South Carolina, it is likely to have been due to the showing of a picture of a different class from the others, or upon a different run.

Such uniformity of action spells a deliberately unlawful system, the existence of which is not dispelled by the testimony of interested witnesses that one distributor does not know what another distributor is doing; and there can, in [fol. 3673] our opinion, be no reasonable inference that the defendants are not all planning to fix minimum prices to which their licensees must adhere. See Record p. 1322.

In addition, several of the exhibits disclose operating agreements between the five distributor-defendants who are also theatre owners, or between them and independent theatre owners in which joint operation of the theatres covered by the agreements is provided and minimum admission prices to be charged are either stated therein, or are to be jointly determined by other means. Apparently those particular price-fixing agreements do not involve the three minor defendants or their subsidiaries. For example, in Plaintiff's Exh. 220 there are agreements between subsidiaries of Loew's and Warner, covering the period of May 5, 1938 to August 31, 1947, according to which the admission prices for three theatres in Pittsburgh—two of Warner and one of Loew's—are to be fixed by a joint committee. In Plaintiff's Exh. 218, an agreement between Warner and Paramount provides that from March 1, 1936, to August 31, 1953, two theatres previously operated by Warner, and one theatre previously operated by Paramount in Hammond, Indiana, should be managed by Warner Bros. Circuit Management Corporation and the then present scale of admission prices maintained. By other agreements in Plaintiff's Exh. 219, RKO and Warner provided for joint operation from August 27, 1937, to August 31, 1950, of five theatres in Cleveland—three of RKO and two of Warner—for which minimum prices are to be determined by a joint operating committee. See also, *e.g.*, Plaintiff's Exh. 229 (Warner and independent); Exh. 213 (Loew's and independents); Exh. 202

(RKO and independent); Exhs. 226, 226a (Paramount, Warner, and independent); Exh. 223 (Warner and independent); Exh. 386 (Paramount, RKO and independent); Exhs. 238, 239 (Fox and independents); Exh. 387 (Paramount, RKO and independent); Exh. 206 (RKO and Paramount); Exh. 221 (Warner and Paramount); Exh. 209 (RKO and Paramount); Exh. 205 (Paramount and inde-
[fol. 3674] pendent). These agreements show the express intent of the major defendants to maintain prices at artificial levels.

As further evidence of a conspiracy among the distributors to fix prices, we find master agreements and franchises between various of the defendants in their capacities as distributors and various of the defendants in their capacities as exhibitors. These contracts stipulate minimum admission prices often for dozens of theatres owned by an exhibitor-defendant in a particular area of the United States. Loew's as distributor, for example, fixed minimum prices for nearly all of Paramount's 133 theatres in Florida in an agreement covering the 1943-44 season. Plaintiff's Exh. 57 (11). In the Chicago area Loew's again as distributor specified prices in a single agreement for upwards of 50 theatres owned by a Paramount subsidiary, Balaban & Katz Corporation. Plaintiff's Exhs. 250, 173. United Artists as distributor also specified prices for the Balaban & Katz theatres in Chicago for the 1941-42 season. Plaintiff's Exh. 369 (6). Similarly, Loew's specified prices for the entire Warner circuit of theatres for the 1943-44 season, Plaintiff's Exh. 57 (8-10, 21-2, 30, 32, 35, 38, 48); for the same season United Artists specified prices for five RKO theatres in Cincinnati, Plaintiff's Exh. 274; Paramount for seven RKO theatres in Cincinnati, Plaintiff's Exh. 240; Loew's for the same seven RKO theatres in Cincinnati, Plaintiff's Exh. 248; Warner for forty or more RKO theatres in Greater New York, Plaintiff's Exh. 126; Loew's for six Fox theatres in Los Angeles County, Plaintiff's Exh. 249; Warner for subsequent run Paramount theatres in Detroit and Birmingham, Michigan, Plaintiff's Exh. 244.

A master agreement between United Artists as distributor and Fox as exhibitor for the season 1938-39 covered distribution of pictures of five independent producers in Fox theatre circuits in Los Angeles, San Francisco, Salt Lake City, St. Louis, Milwaukee, Omaha, Denver, and

other cities, all on a percentage basis. It contained the following clause:

> "Where pictures are licensed on a percentage rental basis the scale of admission prices to be not less [fol. 3675] than the scale of admission prices charged to view pictures of comparable quality exhibited by the exhibitor and distributed by distributors other than United Artists."

The foregoing quotation shows an acquiescence of United Artists in admission prices fixed by any other distributor and an adherence to those prices in its own licenses. Plaintiff's Exh. 199.

A franchise agreement between Universal Corporation as distributor and Interstate Theatres, Inc., and Texas Consolidated Theatres, Inc., for the seasons 1941-44 is similar. Plaintiff's Exh. 261. In each of the two latter companies Paramount had a 50% interest. The franchise covered pictures distributed by Universal to the theatres of the two licensees and contained the ordinary provisions for penalties if minimum admission prices were not maintained. See note 2 *supra*. While no minimum prices were specified in the agreements it is not really questioned that in such circumstances the current prices were implied as part of the contract. See Record pp. 433, 724, 782, 1082, 1210-11.

There is also in evidence a franchise agreement between Columbia Pictures Corporation as distributor and Marcus Loew Booking Agency, a Loew's subsidiary, for the seasons 1944-46 covering pictures distributed to Loew's Metropolitan New York Circuit. Plaintiff's Exh. 471. Minimum admission prices were not specified, but, as in other cases, were implied.

Licenses granted by one defendant to another for exhibition in only one theatre, while less striking evidence of conspiracy than the above master agreements and franchises, disclose the same inter-relationship among the defendants. Each of the five major defendants as a theatre-owning exhibitor has been licensed by the other seven defendants as distributors to exhibit the pictures of the latter at specified minimum prices. RKO, for example, as a theatre-owner, has been granted licenses with price restrictions by the other defendant-distributors. [fol. 3676] In turn, RKO, being itself a distributor, has

granted similar licenses to the other four exhibiting defendants. We think that RKO, Loew's, Warner, Paramount and Fox, in granting and accepting licenses with minimum prices specified, have among themselves engaged in a national system to fix prices, and that Columbia, Universal and United Artists, in requiring the maintenance of minimum prices in their licenses granted to these exhibitor-defendants, have participated in that system.

It is a reasonable inference from all the foregoing that the distributor-defendants have acquiesced in the establishment of a price-fixing system and have conspired with one another to maintain prices. Such a conspiracy is *per se* a violation of the Sherman Act. *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436; *United States* v. *Frankfort Distilleries, Inc.*, 324 U. S. 293; *United States* v. *Masonite Corp.*, 316 U. S. 265.

Moreover, irrespective of the conspiracy among distributors to which we have referred, each distributor-defendant has illegally combined with its licensees, for in agreeing to maintain a stipulated minimum admission price, each exhibitor thereby consents to the minimum price level at which it will compete against other licensees of the same distributor whether they exhibit on the same run or not. The total effect is that through the separate contracts between the distributor and its licensees a price structure is erected which regulates the licensees' ability to compete against one another in admission prices. Each licensee knows from the general uniformity of admission price practices that other licensees having theatres suitable for exhibition of a distributor's picture in the particular competitive area will also be restricted as to maintenance of minimum prices, and this acquiescence of the exhibitors in the distributor's control of price competition renders the whole a conspiracy between each distributor and its licensees. An effective system of price control in which the distributor and its licensees knowingly take part by entering into price-restricting contracts is thereby created. That the combination is made up of a sum [fol. 3677] of separate licensing contracts, individually executed, does not affect its illegality, for tacit participation in a general scheme to control prices is as violative of the Sherman Act as an explicit agreement. *Interstate Circuit* v. *United States*, 306 U. S. 208; *United States* v.

Masonite Corp., 316 U. S. 265; *Goldman Theatres, Inc.* v. *Loew's Inc.*, 150 F. 2d 738 (C.C.A. 3).

This practice of stipulating minimum admission prices in the contracts of license is illegal in another respect. The differentials in price set by a distributor in licensing a particular picture in theatres exhibiting on different runs in the same competitive area are calculated to encourage as many patrons as possible to see the picture in the prior-run theatres where they will pay higher prices than in the subsequent runs. The reason for this is that if 10,000 people of a city's population are ultimately to see the picture—no matter on what run—the gross revenue to be realized from their patronage is increased relatively to the increase in numbers seeing it in the higher-priced prior-run theatres. In effect, the distributor, by the fixing of minimum prices, attempts to give the prior-run exhibitors as near a monopoly of the patronage as possible. This, we believe, to be in violation of § 2 of the Sherman Act, at least when the distributor's own theatres are not exhibiting its picture on a prior-run and it is to theatres other than its own that it attempts to give a monopoly.

It is argued that the practice of minimum admission price-fixing is permitted under the Copyright Act. But that act has never been held to sanction a conspiracy among licensors and licensees artificially to maintain prices. We do not question that the Copyright Act permits the owner of a copyrighted picture to exhibit it in its own theatres upon such terms as it sees fit, nor need we now decide whether a copyright owner may lawfully fix admission prices to be charged by a single independent exhibitor for the exhibition of its film, if other licensors and exhibitors are not in contemplation. *Interstate Cir-*
[fol. 3678] *cuit* v. *United States*, 306 U. S. 208; cf. *United States* v. *General Electric Co.*, 272 U. S. 476. As other licensors and exhibitors are always in contemplation, so far as we can see, the question would appear academic.

This does not contravene the rule announced in *United States* v. *General Electric Co.*, 272 U. S. 476, for there a license to only a single licensee—the Westinghouse Company—was involved, and, therefore, no conspiracy which sought to amplify the rights of the licensor under the Patent Act. The other question involved in that case was whether a patentee might lawfully require its bona fide agents to maintain minimum prices in selling the former's patented

articles. The court held that it could. There is no claim here, however, that the exhibitors as licensees under the distributors' copyrights are agents in any sense, and we do not see that such a claim could be made. In any event, *United States* v. *Masonite Corp.*, 316 U. S. 265, involved facts closely analogous to those here and affords ample basis for our decision.

Some argument has been made that the defendants' fixing of minimum admission prices is exempted from operation of the Sherman Act by the Miller-Tydings Amendment to that act, 50 Stat. 693 (1937), 15 U. S. C. A. § 1 (1940). The amendment pertains, however, only to "contracts or agreements prescribing minimum prices for the resale of a commodity", and the undisputed evidence is that the distributors merely grant licenses to the exhibitors for exhibition of their films and that title to none of their films at any time passes to the exhibitors. Furthermore, the distributor-defendants have engaged in a conspiracy, and the amendment explicitly states that despite its other provisions, contracts or agreements between "persons, firms, or corporations in competition with each other" to establish or maintain minimum prices remain illegal. *United States* v. *Frankfort Distilleries, Inc.*, 324 U. S. 293; *United States* v. *Bausch & Lomb Co.*, 321 U. S. 707; *United States* v. *Univis Lens Co.*, 316 U. S. 241.

The foregoing holding, that the defendants have all engaged in unlawful price-fixing does not prevent the distributors from continuing their present methods of deter-[fol. 3679] mining film rentals; they may measure their compensation by stated sums, by a given percentage of a particular theatre's receipts, by a combination of these two, or by any other appropriate means. What is held to be violative of the Sherman Act is not the distributors' devices for measuring rentals, but their fixing of minimum admission prices which automatically regulates the ability of one licensee to compete against another for the patron's dollar and tends to increase such prices as well as profits from exhibition.

If the exhibitors are not restrained by the distributors in the right to fix their own prices, there will be an opportunity for the exhibitors, whether they be affiliates or independents, to compete with one another. This is because one exhibitor by lowering admission prices will be able to compete with other exhibitors in obtaining patrons for his

theatre—a competition which may well benefit both exhibitors and the public paying the admission fees.

Clearance and Run

Among provisions common to the licensing contracts of all the distributor-defendants are those by which the licensor agrees not to exhibit or grant a license to exhibit a certain motion picture before a specified number of days after the last date of the exhibition therein licensed. This so-called period of "clearance" or "protection" is stated in the various licenses in differing ways: in terms of a given period between designated runs, as for example in the Chicago area, Plaintiff's Exh. 369, see *Bigelow* v. *RKO Radio Pictures, Inc.*, 150 F. 2d 877 (C. C. A. 7), affirmed 326 U. S. — (February 25, 1946), and as in Washington and New York, Plaintiff's Exhibits 244, 471; in terms of admission prices charged by competing theatres, as "20 days over 30¢ theatres, 28 days over 25¢ theatres," Plaintiff's Exhibits 57, 173, 178, 189; in terms of a given period of clearance over specifically named theatres, Plaintiff's Exhibits 94, 181, 242, 253, 259; in terms of so many days' clearance over specified [fol. 3680] areas or towns. Plaintiff's Exhibits 126, 175, 182, 182A, 183, 194, 244, 250, 255, 470, 476; in terms of clearances as fixed by other distributors, Plaintiff's Exhibits 188, 417; or in terms of combinations of these formulae.

It appears to be plaintiff's contention that clearance practices inherently operate to produce unreasonable restrictions of competition among theatres and are therefore *per se* violative of the Sherman Act. With this we do not agree, for it seems to us that a grant of clearance, when not accompanied by a fixing of minimum prices or not unduly extended as to area or duration, affords a fair protection to the interests of the licensee without unreasonably interfering with the interests of the public. At common law a vendor of income-producing property may validly covenant with his purchaser not to compete for a given time or within a given area so long as the restrictions are reasonably necessary to protect the value of the property purchased. *Cincinnati, Portsmouth, Big Sandy and Pomeroy Packet Co.* v. *Bay*, 200 U. S. 179; see *Rogers* v. *Parry*, 2 Cro. 326 (K. B. 1613); *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (C. C. A. 6). It is true that licenses of property rather

than sales are here concerned and that the distributors covenant not only not to exhibit the films themselves, but also not to license them to others. Nevertheless, we believe these are not differences which affect the applicability of the common-law rule to the present case, for licenses between one distributor and one exhibitor with reasonable clearance provisions do not, in our opinion, involve anything unlawful. Such provisions are no more than safeguards against concurrent or subsequent licenses in the same area until the exhibitor whose theatre is involved has had a chance to exhibit the pictures licensed without invasion by a subsequent exhibitor at a lower price. It seems nothing more than an adoption of the common law rule to restrict subsequent exhibitions for a reasonable time within a reasonable area. While clearance may indirectly affect admission prices, it does not fix them and is, we believe, a reasonable restraint permitted by the Sherman [fol. 3681] Act. *Standard Oil Co.* v. *United States*, 221 U. S. 1; *United States* v. *American Tobacco Co.*, 221 U. S. 106; *Westway Theatre, Inc.* v. *Twentieth Century-Fox Film Corp.*, 30 F. Supp. 830, affirmed on opinion below, 113 F. 2d 932 (C. C. A. 4); see *United States* v. *Masonite Corp.*, 316 U. S. 265; *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436.

The costs of each block and white print is from $150 to $300, and of a technicolor print is from $600 to $800. Many of the bookings are for less than the cost of the print so that exhibitions would be confined to the larger, high-priced theatres unless a system of successive runs with a reasonable protection for the earlier runs is adopted in the way of clearance.

In Section VIII of the Consent Decree, moreover, there is the explicit statement to which all parties, including the plaintiff, consented.

> "It is recognized that clearance, reasonable as to time and area, is essential in the distribution and exhibition of motion pictures."

While, as previously stated, we do not deem ourselves bound by any provision of the consent decree if we now find that it violates the Sherman Act, the forcefulness of the phrasing of this sentence indicates the proved utility of clearance practices in the movie industry and also their

apparent necessity for a reasonable conduct of the business. Indeed, it is practically conceded that exhibitors would find extremely perilous the acceptance of licenses for the exhibition of films without assurance by the distributor that a nearby competitor would not be licensed to show the same film either at the same time or so soon thereafter that the exhibitor's expected income—perhaps on the basis of which he agreed to the specified rental—would be greatly diminished. Moreover, we understand the plaintiff to concede that the licensor may license its pictures for different successive dates. A reasonable clearance is in practical effect much the same. Either a license for successive dates, or one [fol. 3682] providing for clearance, permits the public to see the picture in a later-exhibiting theatre at lower than prior rates.

Several courts have previously considered the validity of clearances under the Sherman Act and have concluded that in the absence of an unconscionably long time or too extensive an area embraced by the clearance, or a conspiracy of distributors to fix clearances, there was nothing of itself illegal in their use. *Westway Theatre, Inc.* v. *Twentieth Century-Fox Film Corp.*, 30 F. Supp. 830 (D. Md.), affirmed on opinion below, 113 F. 2d 932 (C. C. A. 4), and unreported cases therein cited; *Gary Theatre Co.* v. *Columbia Pictures Corp.*, 120 F. 2d 891 (C. C. A. 7). We find the reasoning of these cases persuasive.

It is true that in some instances large theatre circuits by use of their great film-buying power have been able to negotiate successfully with the distributor-defendants for grants of unreasonable clearances or unjustified prior runs for their theatres. *United States* v. *Crescent Amusement Co.*, 323 U. S. 173; *Bigelow* v. *RKO Radio Pictures, Inc.*, 150 F. 2d 877 (C. C. A. 7), affirmed 326 U. S. — (February 25, 1946); *Goldman* v. *Loew's*, 150 F. 2d 738 (C. C. A. 3); *United States* v. *Schine Chain Theatres, Inc.*, 63 F. Supp. 229 (W. D. N. Y.). While we cannot find sufficient evidence to support an inference that the major defendants here, though controlling some of the largest circuits of theatres in the country and thus possessing potential weapons of great strength, have either collectively or severally entered upon a general policy of discriminating against independents in their grants of clearances, yet they have acquiesced in and forwarded a uniform system of clearances and in numerous instances have maintained unreasonable clear-

ances to the prejudice of independents and perhaps even of affiliates. The decision of such controversies as may arise over clearances should be left to local suits in the area concerned, or, even more appropriately, to litigation before an Arbitration Board composed of men versed in the complexities of this industry.

In determining the reasonabl-ness of the specific clearances which may come before these tribunals, they should [fol. 3683] consider whether the clearance has been set so as to favor affiliates or control the admission prices of the theatres involved. A distributor will naturally tend to grant a subsequent run to and clearance over a theatre for which the owner of his own volition sets a low admission price, for the distributor will be inclined to seek out the higher priced theatres first where the revenue is likely to be greater and consequently in case of licenses on a percentage basis where a percentage share will be higher. This, however, would seem the inevitable result of the competition for the distributor's films from theatres which are the larger or better equipped, and for which higher admission prices may therefore be charged by their operators. Such competition the lower priced theatres must be prepared to meet, or else be content with subsequent runs and [illegible]unts of clearance over them. The temptation to the [illegible]outor to use clearance grants to force a theatre to raise its prices and thus to qualify for prior runs having less clearance over it, and [illegible]ore clearance over competitors are nevertheless obvious and the courts or arbitration board should guard that this is not done. Clearance should be granted on the basis of theatre conditions which the exhibitor creates, not the distributor. The line to be drawn is indeed indistinct, but its existence is no less real.

In determining whether any clearance complained of is unreasonable, the following factors should be taken into consideration and accorded the importance and weight to which each is entitled, regardless of the order in which they are listed:

(1) The admission prices, as set by the exhibitors, of the theatres involved;

(2) The character and location of the theatres involved, including size, type of entertainment, appointments, transit facilities, etc.;

(3) The policy of operation of the theatres involved, such as the showing of double features, gift nights, give-aways, premiums, cut-rate tickets, lotteries, etc.:

[fol. 3684] (4) The rental terms and license fees paid by the theatres involved and the revenues derived by the distributor-defendant from such theatres;

(5) The extent to which the theatres involved compete with each other for patronage;

(6) The fact that a theatre involved is affiliated with a defendant-distributor or with an independent circuit of theatres should be disregarded; and

(7) There should be no clearance between theatres not in substantial competition.

The foregoing has been directed to the validity of clearance provisions resulting from separate negotiations between individual distributors and exhibitors in free and open competition with other distributors and exhibitors, and, as stated, we believe their reasonable use to be lawful. It is here claimed by plaintiff, however, that the distributor-defendants have acted in concert in the formation of a uniform system of clearances for the theatres to which they license their films and that the exhibitor-defendants have assisted in creating and have acquiesced in this system. This we find to be the case and hold to be in violation of the Sherman Act.

The following testimony warrants the inference that the defendants, as we found to be the case in the fixing of admission prices, have acted in concert in their grants of run and clearance. William F. Rodgers, general sales manager and vice-president of Loew's, testified that the field managers determine whether a theatre shall be licensed to exhibit on a first or on a subsequent run, that the clearance of a given theatre is more or less historical, except for that of new theatres, and that there has been very little change in clearance over a period of years. Record pp. 542-3. Prior to 1943-44 Loew's license agreements provided that the clearance granted therein should apply to any theatre thereafter opened. Record p. 556.

[fol. 3685] Charles M. Reagan, vice-president of Paramount in charge of sales, stated that once clearance is agreed upon, it remains the same unless either exhibitor or

distributor wants to change it. Record pp. 710-11. There is a difference between a distributor's and an exhibitor's interest in the period of clearance granted. The distributor wants to get the most possible in film rental from all the runs, the exhibitor to get as much clearance over a succeeding run as possible, because he has no interest in any succeeding run. The distributor, however, has a definite interest. Record p. 710. Clearances as granted apply to all pictures regardless of their quality. Record p. 715.

Martin J. Mullen, vice-president of M & P Theatres, a managing corporation which operates a group of New England theatres affiliated with Paramount, said that clearance is generally negotiated each time a license contract is made, but is actually carried along from year to year and generally understood when once established; that originally, before his time, clearance was established as a result of individual negotiations and followed along the same lines as they were with some changes. Record p. 968. All defendants grant the same clearance to the same theatre. Record p. 977.

John J. Friedl, president and general manager of the Minnesota Amusement Company, a wholly-owned subsidiary of Paramount, said that he generally got from the various distributors the same clearance for the particular theatre for which he is negotiating; that while clearance is negotiated with each license, it generally remains the same, and the same clearance is granted by distributor-defendants and non-defendants alike, Record p. 1003; that clearance is pretty well established, and it is definitely followed in all cases. Record p. 1013.

Morton J. Thalheimer, an independent theatre exhibitor in Richmond, Virginia, called as a witness by Fox, testified that clearance was in effect in Richmond when he first went into business, and it seemed perfectly normal and natural that it should remain that way; that it protects his first-run [fol. 3686] against his own sub-runs and against his competitors' sub-runs. Record p. 1384. To his knowledge, the system of clearances had existed in Richmond for over nineteen years, during which time there had not been any change. Record p. 1401.

Harold J. Fitzgerald, president of Fox Wisconsin Theatres, Inc., operating sixty-six motion picture theatres in Wisconsin and Michigan, a wholly owned subsidiary of the defendant National Theatres Corporation, testified by

affidavit that the situation with respect to the licensing of films, and the runs and clearance involved, were much the same in 1928 as they are today, Record p. 1973; that licensing arrangements were vital to distributor and exhibitor and that clearance obviously had a definite effect upon the capacity of his corporation to secure patronage at its top admission price. If Fox-Wisconsin undertook to pay a distributor the film rental based upon a high percentage of gross, it would be interested in clearance over any neighborhood theatre which the distributor might license on a competing subsequent run. Generally negotiations as to clearance do not take place with respect to each block of pictures licensed because once a fair and reasonable clearance has been determined by the distributor and exhibitor it tends to become fixed, and ordinarily will be the same in a series of contracts in the absence of any unchanged circumstances and conditions. Record p. 1983.

Benjamin Kalmenson, sales manager of Warner Bros. Distributors Corporation, testified that clearances have been pretty well set through the country for a great many years, and are "acquiesced in by exhibitors, producers, independents, affiliates and everybody, until there has grown up a kind of a system of clearance." Record p. 1506.

Robert Mochrie, general sales manager of RKO Radio Pictures, Inc., stated upon his examination that RKO in determining the length of clearance between theatres, takes into consideration the amount of clearance which in its opinion will yield it the largest revenue, taking all theatres [fol. 3687] into account as a whole and subject to a clearance condition that has built itself up in the city over a period of time. In negotiating licenses, there is frequent occasion to give consideration to the existing clearance between theatres, but they do not consider it anew each time because the factors which determined it originally at some past time remain stable from year to year. He said there are no general or frequent instances in his practice of clearances different in some particular city from those granted by a co-defendant. He usually knows what clearances other distributors are granting. His customer usually tells him what clearance he wants, which is what he is getting from other distributors. He has no agreements with other distributors that he will adopt the same clearance, and his explanation as to why in some instances the clearances granted by RKO to a prior run theatre is the

same as a clearance granted by one or more other distributors serving the same theatre is that clearance has been the outgrowth in time between those two theatres, and the exhibitor buys such products on such a clearance basis and offers the witness the same. Record pp. 1714-5.

Abraham Montague, general sales manager of Columbia, testified that in negotiating deals, the "clearance is something we usually find when we arrive there, and we usually negotiate our deal within the clearance we find"; that it would be impracticable and impossible to set up new clearance. Record p. 1268. His company keeps a record of clearances in the community. Record p. 1347. Where his company grants clearance to one theatre over another, it usually follows the pattern set by clearance that is given by other major distributors as well as those which are not majors. He usually does not make any independent determination of whether the clearance is reasonable or unreasonable. He takes it as he finds it, and finding it in most cases standardized, his company does not feel that it is strong enough to change it. Record pp. 1376-7.

Paul N. Lazarus, manager of the contract department of United Artists, testified that clearances are "generally [fol. 3688] understood, and they follow along their established custom." Record p. 1440. For testimony of other witnesses to the same effect as the foregoing, see Record pp. 2012, 2043, 2049, 2086, 2110-11.

The fixed character of clearances and the uniformity of the distributor-defendants' practice with reference thereto are shown by the exhibits, as well as the testimony. Many of the franchises, master agreements, and so-called "formula deals" which are in evidence provide that clearances shall be the same as those in effect on the date of the agreement. See Plaintiff's Exhibits 419A (RKO and independent); 419B (RKO and Paramount); 241 (Paramount and Fox); 172 (Paramount and Loew's); 473 (RKO and Universal); 245 (Warner and Fox); 251 (Fox and Paramount); 254 (Fox and RKO). Some of the agreements establish clearances for more than a season. See Plaintiff's Exhibits 181 (3 years, Loew's and Warner); 187 (3 years, Loew's and Fox); 249 (9 years, Loew's and Fox); (3 years, Warner and Universal). Others provide that the clearance is to be no less favorable to the exhibitor than that which had been granted by the distributor for the previous season or in the preceding agreement. See Plain-

tiff's Exhibits 265, 472, (Columbia and Fox); 190 (RKO and Fox); 199, 272A 383, (United Artists and Fox).

In some of the agreements, the clearance therein stated was also to be granted to all theatres which the exhibitor-party to the contract might thereafter own, lease, control, manage, or operate. See Plaintiff's Exhibits 172 (Paramount and Loew's); 266, 266A (Columbia and Warner); 471 (Columbia and Loew's); 192 (Fox and Warner). Moreover, the license forms for 1936-7 of Paramount, Fox, Loew's, Warner, RKO, Columbia and Universal, and for 1943-44 of Paramount, Warner, Columbia and Universal, each contain a provision identical or similar to the following:

> "If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres [fol. 3689] in the immediate vicinity of the Exhibitor's theatre, then unless otherwise provided in the schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened." See Plaintiff's Exhibits 275, 277, 279-81, 283-6, 289-90.

It is clear that the purpose of these two types of clearance agreements was to fix the run and clearance status of any theatre thereafter opened, not on the basis of its appointments, size, location, and other competitive factors normally entering into such a determination, but rather upon the sole basis of whether it were operated by the exhibitor-party to the agreement.

Much that has been said about clearances is applicable also to runs; the two are practically alike. Clearances are given to protect a particular run against a subsequent run, and the practice of clearances is so closely allied with that of run as to make comment on the one applicable to the other.

Rodgers, of Loew's, testified that a run usually remains static for a given theatre. Record p. 421, and he determines what runs shall be "offered" to an exhibitor. Record p. 418. The size of the theatre does not necessarily determine whether it is satisfactory for operation on a first run. Record p. 566.

Reagan, of Paramount, said that negotiations with an exhibitor are "usually conducted on the basis of a particular run." In the case of a new theatre, the distributor

usually considers whether it wants to do business on the run the theatre would like.[7] In the New York area, second runs are sold by him only to Loew's and RKO. Record pp. 815-16.

[fol. 3690] The evidence we have referred to shows that both independent distributors and exhibitors when attempting to bargain with the defendants have been met by a fixed scale of clearances, runs, and admission prices to which they have been obliged to conform if they wished to get their pictures shown upon satisfactory runs or were to compete in exhibition either with the defendants' theatres or with theatres to which the latter have licensed their pictures. Under the circumstances disclosed in the record there has been no fair chance for either the present or any future licensees to change a situation sanctioned by such effective control and general acquiescence as have obtained. See *Bigelow* v. *RKO Radio Pictures; Inc.*, 150 F. 2d 877 (C.C.A. 7), affirmed 326 U.S. (February 25, 1946); *Goldman*

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[7] "Q. And some negotiations are conducted on the basis of a first-run of a product, some second, some subsequent? A. Yes, sir.

Judge Bright: You mean the particular run is established before the negotiation with the exhibitor?

The Witness: Sometimes it generally is established, although that has been the result of years of experience that we have had in negotiating with our customers.

Judge Bright: How about a new theatre or new exhibitor?

The Witness: There is nothing established there, and we consider all the factors there and make a decision on whether we want to do business with him on the run that we would like to have.

Q. Now, how is the matter of terms upon which Paramount films will be licensed, determined? A. Determined by negotiations based upon experience we have had with the particular theatre with whom we are negotiating." Record, p. 693.

Q. You do not mean that each time there is a negotiation the whole question of run is opened up again? A. No, it is not.

Q. The policy on which the theatre is operated has usually been established over a long period of time? A. Yes.

v. *Loew's, Inc.*, 150 F. 2d 738 (C.C.A. 3); *Youngclaus* v. *Omaha Film Board of Trade*, 60 F. 2d 538 (D. C. Neb.). The only way competition may be introduced into the present system of fixed prices, clearances, and runs is to require a defendant when licensing its pictures to other exhibitors to make each picture available at a minimum fixed or percentage rental and (if clearance is desired) to grant a reasonable clearance and run. When so offered, the licensor shall grant the license for the desired run to the highest bidder if such bidder is responsible and has a theatre of a size, location, and equipment to present the picture to advantage. In other words, if two theatres are bidding and are fairly comparable the one offering the best terms shall receive the license. Thus price fixing among the licensors or between a licensor and its licensees as well as the non-competitive clearance system may be terminated, [fol. 3691] and the requirements of the Sherman Act, which the present system violates, will be adequately met. The administrative details involved in such changes will require further consideration. We are satisfied that existing arrangements are in derogation of the rights of independent distributors, exhibitors, and the public, and that the proposed changes will tend to benefit them all.

Formula Deals, Master Agreements, and Franchises

Formula deals, certain master agreements, and franchises have tended to restrain trade in the distribution and exhibition of motion picture features and in view of the history and relation to the moving picture business of the various parties to this action have exercised unreasonable restraints. In our opinion these restraints will be obviated or at least sufficiently mitigated by requiring a distributor wishing its pictures to be shown outside of its own theatres to offer to license each picture to all theatres desiring to show it on a particular run and, if the theatres are responsibly owned and otherwise adequate, to grant the desired run to the highest bidder.

Formula deals have been entered into by Paramount and by RKO with independent and affiliated circuits. By such agreements a particular circuit has been licensed to exhibit a certain feature in all its theatres at a specified percentage of the national gross receipts realized from that feature by all theatres in the United States. The circuit may allocate playing time and film rentals among the various theatres as

it sees fit. See Plaintiff's Exhibits 241, 419A, 419B. Arrangements whereby all the theatres of a circuit are included in a single agreement, and no opportunity is afforded for other theatre owners to bid for the picture in their several areas, seriously and as we hold unreasonably restrain competition. These formula deals have been negotiated without, so far as we are informed, any competition on the part of independent theatre owners who would labor under [fol. 3692] a great disadvantage in attempting severally to match or outbid the offers of a circuit that was making offers for all of its theatres.

Certain master agreements are open to the same objection as formula deals, for they cover exhibition in two or more theatres in a particular circuit and allow the exhibitor to allocate the film rental paid among the theatres as it sees fit and also to exhibit the features upon such playing time as it deems best, and leaves other terms to the circuit's discretion. See, *e.g.*, Plaintiff's Exhibits 196, 251, 267, 270, 270A, 273, 476. These are different from some other master agreements in which there are separate provisions covering the licensing of the picture for each particular theatre. See, *e.g.*, Plaintiff's Exhibits 182, 182A, 189, 190, 191, 248. These later agreements in effect only combine in one document a number of theatres with proper licenses for each. This may be done if there is an opportunity for exhibitors to bid for the same runs at an offered price.

Franchises which so far as the five major defendants are concerned were forbidden by the consent decree are also objectionable because they cover too long periods (more than one season) and also because they embrace all the pictures released by a given distributor. They necessarily contravene the plan of licensing each picture theatre by theatre, to the highest bidder.

It is true that a prohibition of formula deals, master agreements and franchises will interfere with certain contracts which have been made in the past but their formation was a restraint upon trade which was unlawful at the time they were made, and therefore should not be continued. We see no reason to hold that the failure to bring in to this suit one of the contracting parties prevents the issue of an injunction forbidding one who is a party to the suit from continuing to carry out an arrangement which causes unlawful restraints. While our decision will not be res judicata as to those not parties to the litigation, the parties

are necessarily and properly bound, and indeed the decision is a judicial precedent against the others on the questions [fol. 3693] of law involved in those situations we have referred to where they have unreasonably restrained trade and commerce.

In our opinion it follows from the foregoing that provisions in license agreements known as moveovers which give to a licensee the privilege of exhibiting a given picture in a second theatre as a continuation of a run in a first theatre are incompatible with the system we have prescribed of bidding for pictures and runs theatre by theatre. The same would seem to be true of so-called overage-and-underage provisions which are often inserted in licenses to permit an exhibitor owning a number of theatres to apply a deficit in the playing time in one or more others. Under such provisions it is not possible to determine the amount payable for the account of one theatre until the performances in the others have been completed, or practically to apply the bidding system we are establishing. But provisions in licenses for "extended" or "repeat" runs in the same theatre, though apparently criticized by the government, would not seem to be objectionable if reasonably limited in time when other exhibitors are given the opportunity to bid for similar licenses. Likewise, any other license provisions which may be called to our attention that would substantially interfere with the effectiveness of the bidding system would have to be revised and perhaps may have to be specially dealt with in the decree to follow this opinion.

Block-booking and Blind-selling

For many years the distributor-defendants licensed their films in "blocks," or indivisible groups, before they had been actually produced. In such cases the only knowledge prospective exhibitors had of the films which they had contracted for was from a description of each picture by title, plot and players. In many cases licenses for all the films had to be accepted in order to obtain any, though sometimes the exhibitor was given a right of subsequent cancellation for a certain number of pictures. Because of complaints [fol. 3694] of block-booking and blind-selling based upon the supposed unfairness of contracts which often included pictures—the inferior quality of which could not be known—Sections III and IV of the consent decree required the

five consenting distributors to trade-show their films before offering them for license and limited the number which might be included in any contract to five. More than one block of five however could be licensed where the contents of any had been trade-shown. While this restriction in the consent decree has now ceased by time limitation, the consenting distributors have continued to observe the restriction. The non-assenting distributors have retained up to the present time their previous methods of licensing in blocks, but have allowed their customers considerable freedom to cancel the license as to a percentage of the pictures contracted for.

The plaintiff argues that the Sherman Act forbids block-booking in toto. This is said to be because it is illegal to condition the licensing of one film upon the acceptance of another, and it therefore can make no difference whether the group of films involved in a license be two or forty. In our opinion this contention is sound, and any form of block-booking is illegal by which an exhibitor, in order to obtain a license for one or more films, must accept a license for one or more other films.

A patentee who has granted a license in consideration that the patented invention shall be used by the licensee only with unpatented material furnished by the licensor may not restrain as a contributory infringer one who sells to the licensee like materials for like use. *Mercoid Corp.* v. *Mid-Continent Investment Co.*, 320 U. S. 661; *Mercoid Corp.* v. *Minneapolis-Honeywell Regulator Co.*, 320 U. S. 680; *Morton Salt Co.* v. *G. S. Suppiger*, 314 U. S. 488, 491; *Motion Picture Patents Co.* v. *Universal Film Mfg. Co.*, 243 U. S. 502; *Carbice Corp.* v. *American Patents Corp.*, 283 U. S. 27; *Leitch Mfg. Co.* v. *Barber Co.*, 302 U. S. 458. Moreover, as was said in *Mercoid Corp.* v. *Mid-Continent Co.*, 320 U. S. 661, 670, a decree for an injunction against [fol. 3695] a contributory infringer would sanction both "a misuse of the patent privilege and a violation of the anti-trust laws." The same rule would appear to apply to copyrights and prevent a suit for contributory infringement by a copyright owner who had licensed the printing of his book, only in connection with paper supplied by him, against a third party supplying paper to the licensee in violation of the agreement. See *Interstate Circuit Inc.* v. *United States*, 306 U. S. 208; *United States* v. *Crescent*

Amusement Co., 323 U. S. 173; *Straus* v. *Am. Publishers' Ass'n*, 231 U. S. 222.

It is true that a copyrighted motion picture when united with another copyrighted picture by block-booking is not tied to an uncopyrighted article. Nevertheless the objections to conditioning the licensing of one picture upon the licensing of another are the same, for the result is to give the copyright owner not only the reward which is his due from the licensing of a single copyrighted film, but to extend his monopoly by requiring his licensee to accept one or more other films and to pay royalties therefor as an additional consideration. We cannot see that this differs in principle from requiring the licensee to purchase uncopyrighted articles in connection with the license of a copyright. In either case the copyright owner is obtaining something which the decisions have forbidden as beyond the grant of his limited monopoly. Justice Holmes in his dissenting opinion in *Motion Picture Patents Co.* v. *Universal Film Mfg. Co.*, 243 U. S. 502, 519, argued persuasively that the right of the owner of a patent to keep his device out of use included the right to condition its use. Such a doctrine would contravene the rule we are laying down, but his views were rejected by the majority of the Supreme Court in that decision, as well as in *Straus* v. *Victor Talking Machine Co.*, 243 U. S. 490, and have proved to be contrary to a long line of subsequent decisions of that court—indeed to have been supplanted by the general trend of authority ever since the days of *Henry* v. *Dick*, 224 U. S. 1.

It may be argued that the common law gives a right to condition the licensing of one film upon the acceptance of [fol. 3696] another—that it is as though the owner of ordinary chattels refused to sell a lot to A unless the latter would purchase in a larger quantity than he desired. The question whether such a contract involving patents or copyrights was good at common law was apparently left open in *Motion Picture Patents Co.* v. *Universal Film Mfg. Co.*, 243 U. S. 503, and *Keeler* v. *Standard Folding Bed Co.*, 157 U. S. 659, and in *Federal Trade Commission* v. *Paramount Famous-Lasky Corp.*, 57 F. 2d 152, the Court of Appeals for the Second Circuit sustained contracts of block-booking.

Block-booking, when the license of any film is conditioned upon taking of other films, is a system which prevents com-

petitors from bidding for single pictures on their individual merits and adds to the monopoly of a single copyrighted picture that of another copyrighted picture which must be taken and exhibited in order to secure the first. It differs from such a sale of chattels as we have mentioned because it extends a monopoly which the owner of the chattels is not assumed to have. We are not inclined to follow *Federal Trade Commission* v. *Paramount Famous-Lasky Corp.*, 57 F. 2d 152 (C. C. A. 2), for the reason we have given and particularly because of recent decisions of the Supreme Court. As Stone, C. J., said in *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436, 459,—when dealing with the use of one patent to exploit another.

> "• • • It [Ethyl Gasoline Corporation] has chosen to exploit its patents by manufacturing the fluid covered by them and by selling that fluid to refiners for use in the manufacture of motor fuel. Such benefits as result from control over the marketing of the treated fuel by the jobbers accrue primarily to the refiners and indirectly to appellant, only in the enjoyment of its monopoly of the fluid secured under another patent. The licensing conditions are thus not used as a means of stimulating the commercial development and financial returns of the patented invention which is licensed, but for the commercial development of the business of the refiners and the exploitation of a second patent monopoly not embraced in the first. [fol. 3697] The patent monopoly of one invention may no more be enlarged for the exploitation of a monopoly of another, see Standard Sanitary Mfg. Co. *v.* United States, supra, than for the exploitation of an unpatented article, United Shoe Machinery Co. *v.* United States, supra; Carbice Corporation *v.* American Patents Corp., supra; Leitch Manufacturing Co. *v.* Barber Co., supra; American Lecithin Co. *v.* Warfield Co., 105 F. 2d 207, or for the exploitation or promotion of a business not embraced within the patent. Interstate Circuit *v.* United States, supra, 228-230."

See also *United States* v. *Crescent Amusement Co.*, 323 U. S. 173; *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 415, 452-3; *Mercoid Corp.* v. *Mid-Continent Investment Co.*, 320 U. S. 661, 670; *Mercoid Corp.* v. *Minne-*

apolis Honeywell Regulator Co., 320 U. S. 680, 684; *United States* v. *Masonite Corp.*, 316 U. S. 265, 277-8; *Interstate Circuit, Inc. v. United States*, 306 U. S. 208, 227-230; *Stokes & Smith Co.* v. *Transparent-Wrap Machine Corp.*, decided by Second Circuit Court of Appeals May 1, 1946.

We however declare illegal only that aspect of block-booking which makes the licensing of one copyright conditional upon an agreement to accept a license of one or more other copyrights. A distributor may license to an exhibitor at one time as many films as the latter wishes to receive, but the distributor may not constitute groups of pictures which it refuses to license separately. The distributor may of course not license his pictures at all, but if he does license them, he must do so severally and, in accordance with the bidding procedure previously indicated, must license them to the exhibitor or exhibitors who are qualified and offer the best terms for the various runs.

Blind-selling does not appear to be as inherently restrictive of competition as block-booking, although it is capable of some abuse. By this practise a distributor could promise a picture of good quality or of a certain type which when produced, might prove to be of poor quality or of another type—a competing distributor meanwhile being unable to [fol. 3698] market its product and in the end losing its outlets for future pictures. The evidence indicates that trade-shows, which are designed to prevent such blind-selling, are poorly attended by exhibitors. Record pp. 1178-9. Accordingly, exhibitors who choose to obtain their films for exhibition in quantities, need to be protected against burdensome agreements by being given an option to reject a certain percentage of their blind-licensed pictures within a reasonable time after they shall have become available for inspection. Such right of rejection has been incorporated in numerous licenses given by the defendants and should be afforded whenever licenses of unproduced films and films not trade-shown are secured by an exhibitor who has made the best competitive bid for them.

The only group licensing we are prepared to sanction is licensing by which the group is not offered on condition that the licensee shall take all the pictures included in it, or none, but in which the pictures are separately priced, and each picture is to be sold to the highest duly qualified bidder. As we have already indicated in discussing formula deals,

master agreements, and franchises, the offering of pictures should be theatre by theatre, and if more than one picture is included a license agreement, it will be only because of business convenience and to the extent that each picture so included has received the best bid.

"Pooling" Agreements

It is claimed by plaintiff that the theatre-owning defendants have combined with each other and with independent theatre-owners by "pooling" their theatres through operating agreements, leases, joint stock ownership of theatre-operating corporations, or through joint ownership of theatres in fee. We are asked to determine the validity of these various means of joining interests.

By far the most numerous type of agreement in evidence is that by which given theatres of two or more exhibitors, [fol. 3699] normally in competition with each other, are operated as a unit or most of their business policies collectively determined by a joint committee, or by one of the exhibitors, and by which profits of the "pooled" theatres are divided among the owners according to pre-agreed percentages. See, *e.g.*, Plaintiff's Exhibits 9, 100, 200, 206, 213, 218, 220-1, 223, 226, 226A, 232. Some of the agreements provide that the parties thereto may not acquire other theatres in the competitive vicinity without first offering them for inclusion in the "pool". See, *e.g.*, Plaintiff's Exhibits 201, 205-6, 219.

These operating agreements we hold to be in clear conflict with the Sherman Act, for through them a defendant-exhibitor reduces to a minimum opposition between its own and other theatres in the "pool". Cooperation, rather than competition, characterizes their operation, and in view of the exhibitor-defendants' financial strength, control of first-class film distribution, ownership of concentrated numbers of first-run theatres, and especially their combination to reduce competition in exhibition through systems of price-fixing and clearances, such restraints as these agreements impose upon free commerce in motion pictures are far less than reasonable. The result is to eliminate competition *pro tanto* both in exhibition and in distribution of films which would flow almost automatically to the theatres in the earnings of which they have a joint interest.

Other forms of operating agreements are between major defendants and independent exhibitors rather than between

major defendants, see, *e.g.*, Plaintiff's Exhibits 97, 118, 208, 238-9, 358, but we are not of the opinion that this renders them legal. The effect is to ally two or more theatres of different ownership into a coalition for the nullification of competition between them and for their more effective competition against theatres not members of the "pool". Even if the parties to such combinations were not major film producers and distributors but were all wholly independent exhibitors, such agreements might often be regarded as beyond the reasonable limits of restraint allowance under [fol. 3700] the Sherman Act. This result is certain when some of the parties are of major statute in the movie industry and have in other ways imposed unlawful restraints upon it, as we have found to be the case upon the record before us.

In certain other cases the operating agreements are accomplished by leases of theatres, the rentals being determined by a stipulated percentage of profits earned by the "pooled" theatres, see, *e.g.*, Plaintiff's Exhibits 9, 106, 118, 204. This appears to be but another means of carrying out the illegal objection discussed above. While a theatre-owner may of course remove itself from the business of operating theatres by leasing them to anyone it deems fit upon a fixed rental basis, so long as a monopoly in exhibition is not thereby achieved by the lessee, any arrangement whereby one of the exhibitor-defendants in this case allies its theatres with those of a competing exhibitor, independent or affiliated, and yet itself remains in the trade of exhibiting motion pictures by retaining an interest in the profits earned by the allied theatres, is unlawful under the anti-trust acts.

Many theatres, or the corporations owning them, are held jointly by one or more of the exhibitor-defendants, in some cases in conjunction with independents. See, *e.g.*, Plaintiff's Exhibits 8, 9, 46, 48, 62, 164, 355, 387; RKO's Exhibit 11. As these joint interests enable the major defendants to operate theatres collectively, rather than competitively, we find them illegal for the reasons above stated. Appropriate steps should be taken so that no exhibitor-defendant will own theatres (whether represented by fee, beneficial, or stock interests) jointly with other exhibitor-defendants, regardless of the size of the interests involved. Appropriate steps should also be taken so that no exhibitor-defendant or defendants will jointly own a theatre or stock interest

therein with any independent exhibitor, except when a defendant or an independent owns an interest of five per cent or less, which we deem *de minimis* and only to be treated as an inconsequential investment in exhibition. See *infra* p. 71. This result may be reached in situations like Florida, [fol. 3701] Texas, Minnesota and Michigan by a sale, purchase, or exchange of interests in jointly-owned theatres so long as the transaction sought to be achieved will not result in an unreasonable restraint of competition in exhibition within the particular competitive area. To this end the court will control the manner in which rearrangements of these joint interests are effected.

It seems impracticable to do more than lay down general rules as to the foregoing situations. If further details are required to cover specific provisions of the various pooling agreements, they should be set forth in the decree to be hereafter entered.

It should be added that in our opinion there can be no objection to operating, booking, or film buying through agents, provided the agent is not also acting in respect to theatres owned by other exhibitors, independent or affiliated, and provided that in case the agent is buying films for its principal he does this through the bidding system, theatre by theatre.

Discrimination among Licensees

The amended and supplemental complaint alleges that in licensing films each of the distributor-defendants has discriminated against small independent exhibitors and in favor of the large affiliated and unaffiliated circuits. Of the various contract provisions by which such discriminations are said to have been accomplished, plaintiff sets forth the following in its brief: suspending the terms of a given contract, if a circuit theatre remains closed for more than eight weeks, and reinstating it without liability upon reopening, Plaintiff's Exhibits 188, 265-6, 383-4, 472-3; allowing large privileges in the selection and elimination of films, Plaintiff's Exhibits 172, 177, 192, 263-6, 383-4, 472; allowing deductions in film rentals if double bills are played, Plaintiff's Exhibits 183-4, 190, 199, 242, 245, 247, 258-9, 262, 264-6, 271-2a, 274, 382-3, 473; granting moveovers and extended runs, Plaintiff's Exhibits 182-2a, 199, 260, 262, 265, 267, 274, 383-4, 474, 476; granting roadshow privileges, Plaintiff's Exhibits 187-8, 199, 232, 265-6, 383-4, 472; allow-

[fol. 3702] ing overage and underage, Plaintiff's Exhibits 190-1, 194, 259, 265-6, 383; granting unlimited playing time, Plaintiff's Exhibits 241, 267, 269, 471; excluding foreign pictures and those of independent producers, Plaintiff's Exhibits 173-4, 181, 190-1, 194, 199, 262, 265-6, 272a, 383-4, 395, 470-2; granting rights to question the classification of features for rental purposes Plaintiff's Exhibits 187, 232, 259, 265, 472-3; and especially, discriminating in film rentals, clearances, and minimum admission prices, see Plaintiff's Brief pp. 56-70, 75-85.

These provisions are found most frequently in franchises and master agreements, which are made with the larger circuits of affiliated and unaffiliated theatres. Record pp. 1432-3; Columbia's Exhibit 9a; Universal's Exhibit 2; Plaintiff's Exhibits 195, 198, 259, 261, 265-6a, 384, 396, 470-3. Small independents are usually licensed, however, upon the standard forms of contract, which do not include them. Record pp. 1432-3; Plaintiff's Exhibits 275-90. The competitive advantages of these provisions are so great that their inclusion in contracts with the larger circuits constitutes an unreasonable discrimination against small competitors in violation of the anti-trust laws. It seems unnecessary to decide whether the record before us justifies a reasonable inference that the distributor-defendants have conspired among themselves to discriminate among their licensees, for each discriminating contract constitutes a conspiracy between the licensee and licensor. *Interstate Circuit Inc. v. United States*, 306 U. S. 208; *United States* v. *Crescent Amusement Co.*, 323 U. S. 173.

The defendants argue that these privileges granted to the circuits flow from their negotiations with the individual theatre-owners rather than from a standard policy of discrimination deliberately pursued by them. This is perhaps true, but the result is the same whether the bargaining power of the large exhibitors forces upon the distributors a discriminatory policy, or whether the latter voluntarily carry such a policy into effect. Acquiescence in an unreasonable [fol. 3703] restraint, as well as the creation of such a restraint, violates the Sherman Act. Under the bidding system we are requiring such discriminations would appear impossible. Those provisions which are not compatible with the operation of this system, or which are inherently unreasonable, such as a provision for clearance between theatres where there is no substantial competition, will no

longer be includible in licenses, as mentioned elsewhere, but otherwise the bidders will compete for licensing contracts on a parity, in that the same offer will be made to all prospective exhibitors in a community.

The foregoing is not to be construed, however, as indicating that the distributor-defendants have discriminated among their licensees with respect to film rentals, clearances, or minimum admission prices. They have perhaps done so, but we are without sufficient knowledge of the many factors entering into the determination of these provisions such as the character of specific communities, the nature of the different theatre appointments, of the patrons, operating policies, locations, and responsibilities of operators. In the absence of such facts, we are unable to infer that the distributor-defendants have violated the Sherman Act in this particular regard, but any discriminations in the other ways noted above in favor of affiliated licensee or licensees connected with independent circuits as against individual independents must be enjoined, and we believe will not exist in future licenses under the bidding system for which we are providing.

Divestiture of Theatres

We cannot accede to the prayer of the plaintiff that the major defendants should be divested of their theatres in order that no distributor of motion pictures shall be an exhibitor. Undoubtedly such a step, while not *ipso facto* preventing price-fixing agreements or unreasonable clearance would terminate the government's most urgent objections to [fol. 3704] the present methods of conducting the motion picture business, but it would also withdraw the defendant-distributors from competition in the exhibition field and at the same time would create a new set of theatre owners which would be quite unlikely for some years to give the public as good service as the exhibitors they would have supplanted in view of the latter's demonstrated experience and skill in operating what must be regarded as in general the largest and best equipped theatres. We think that the opportunity of independents to compete under the bidding system for pictures and runs renders such a harsh remedy as complete divestiture unnecessary, at least until the efficiency of that system has been tried and found wanting.

In the year 1945 there were about 18,076 motion picture theatres in the United States of which the five major defend-

ants had interests in 3,137 or 17.35 per cent. Of the latter, Paramount or its subsidiaries owned independently of the other defendants 1395—a little less than half, or about 7.72 per cent; Warner 501, or about 2.77 per cent; Loew's 133, or about .74 per cent; Fox 636, or about 3.52 per cent, and RKO 109, or about .60 per cent. There were 361 theatres, or about 2.00 per cent, in which two or more of these defendants had joint interests, whether held directly or indirectly through stock ownership in the same corporation or through a lease or operating agreement. This tabulation excludes theatres connected with one or more of the defendants through film-buying or management contracts or through corporations in which a defendant owns an indirect minority stock interest. It includes all theatres in which each defendant otherwise owns a direct or indirect interest of any amount. See Loew's Exhibit 2; RKO's Exhibit 11; Plaintiff's Exhibits 8, 9, 12-3, 22, 47-8, 64, 87-8, 97, 100, 118-20, 156-64, 360.

It would seem unlikely that theatre owners having aggregate interests of little more than one-sixth of all the theatres in the United States are exercising such a monopoly of the motion picture business that they should be subjected to the [fol. 3705] drastic remedy of complete divestiture in order to effect a proper degree of free competition. It is only in certain localities, and not in general, that an ownership even of first-run theatres approximating monopoly exists. Under the proposed system, the only theatres the competition of which in exhibition even Paramount—the largest owner—would in anywise control are the 7.72 per cent which it now owns. Each of the other four major defendants would control a far smaller percentage of the theatres. Even in places like Philadelphia and Cincinnati, where Warner and RKO have owned all the first-run theatres, their theatre interest cannot properly be aggregated to establish a conspiracy in restraining exhibitions, for in such localities there would seem to be nothing to prevent other persons from building theatres of a similar type if the market for the distribution of films should be opened to the highest bidder and the builder of a new theatre could compete with the other theatre owners in obtaining pictures for exhibition in the theatre he had built. The only pictures that the present sole exhibitors in such localities could control would be their own, which they can always exhibit freely in their own theatres.

In about 60 per cent of the 92 cities having populations

of over 100,000 on which the government mainly relies to prove its case, there are independent first-run theatres in competition with those of the major defendants except so far as it may be restricted by the trade practices we have criticized[8]. In about 91 per cent of these cities there is competition in first runs between independents and some of the major defendants or among the major defendants themselves [fol. 3706] except so far as it may be restricted by the above trade practices.[9] If the bidding system we propose to set up, minimum admission prices in licenses eliminated, and the other restrictive agreements which we have discussed terminated, it is our opinion that adequate competition would exist. Indeed in all of the 92 cities, even where there is no present competition in first runs there is always competition in some run.

Moreover, there is no substantial proof that any of the corporate defendants was organized or has been maintained for the purpose of achieving a national monopoly, as was the case in *Standard Oil Co.* v. *United States*, 221 U. S. 1; *United States* v. *American Tobacco Co.*, 221 U. S. 106, and *United States* v. *Aluminum Co. of America*, 148 F. 2d 416 (C. C. A. 2). The five major defendants cannot be treated collectively so as to establish claims of general monopolization in exhibition. They can only be restrained from the unlawful practices in fixing minimum prices, obtaining unreasonable clearances, block-booking, and other things we have criticized.

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[8] According to Loew's Exhibit 13 and RKO's Exhibit 11, there are independent first-run theatres in all but the following 38 cities: Albany, Bridgeport, Charlotte, Chattanooga, Cincinnati, Cleveland, Columbus, Dallas, Dayton, Des Moines, Elizabeth, Erie, Flint, Fort Worth, Grand Rapids, Houston, Jersey City, Kansas City, Mo., Knoxville, Lowell, Memphis, Milwaukee, Minneapolis, Newark, New Haven, Norfolk, Omaha, Paterson, Peoria, Rochester, San Antonio, Scranton, South Bend, Syracuse, Toledo, Wichita, Worcester, Yonkers.

[9] Upon the termination of "pooling" agreements a major defendant may control all of the first-run theatres in only the following 8 cities: Charlotte, Chattanooga, Cincinnati, Erie, Knoxville, Peoria, South Bend, Wichita. Loew's Exhibit 13; RKO's Exhibit 11.

If in certain localities there is ownership by a single defendant of all the first-run theatres, there is no sufficient proof that it has been for the purpose of creating a monopoly and has not rather arisen from the inertness of competitors, their lack of financial ability to build theatres comparable to those of the defendants, or from the preference of the public for the best equipped houses and not from "inherent vice" on the part of these defendants. Each defendant had a right to build and to own theatres and to exhibit pictures in them, and it takes greater proof than that each of them possessed great financial strength, many theatres, and exhibited the greater number of first-runs to deprive it of the ordinary rights of ownership. Outside the limits of the trade practices and agreements which we have [fol. 3707] found to violate the anti-trust laws and which will under the final decree be abolished, there is general competition among all the defendants as well as between them and independent distributors for the exhibition of their various pictures. Record p. 1062.

As was said by the expediting court in *United States* v. *The Pullman Company*, 64 F. Supp. 108, 112, (E. D. Pa., 1945):

> "If there is only one store in a town at which every one trades, that fact does not itself constitute a monopoly in the legal sense. It is only when the merchant maintains his position by devices which compel everyone to trade with him exclusively that the situation becomes legally objectionable."

In the case at bar, as we have reiterated, many of the objections are to the trade practices we have alluded to, and not to the ownership of theatres either by the major defendants or by their wholly-owned subsidiaries. If those theatres were all owned by entirely independent corporations the distributing-producing defendants, if not in competition in the distribution of their films, would control competition in the exhibition business by in the aggregate control-ing the distribution of most of the best pictures in the United States and imposing restrictions upon their use. The root of the difficulties we have discovered lies not in the ownership of many or most of the best theatres by the producer-distributors, but in price-fixing, non-competitive granting of runs and clearances, unreasonable clearances, formula deals, master agreements, franchises, block-booking, pooling

agreements and certain discriminations among licensees between defendants and independents. These practices, if employed in the future, in favor of powerful independents would effect all of the undesirable results that have existed when the five major defendants and their subsidiaries have owned or controlled numerous theatres in which the defendants' pictures have been exhibited. That such would be the case seems amply demonstrated by the decisions where [fol. 3708] powerful independent circuits were involved. *United States v. Crescent Amusement Co.*, 323 U. S. 173; *Interstate Circuit Inc. v. United States*, 306 U. S. 208. If the objectionable trade practices were eliminated, the only difference between such an assumed situation in which the defendants owned no theatres and the present would be the inability of the major defendants to play their own pictures in their own theatres. The percentage of pictures on the market which any of the five major defendants could play in its own theatres would be relatively small and in nowise approximates a monopoly of film exhibition.[10]

There has however been restraint of competition in exhibition by the five major defendants through ownership of theatres jointly with one another or if their interests be more than five per cent even where jointly held with inde- [fol. 3709] pendents which, in our opinion, calls for a divesti-

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[10] The following table is derived from Plaintiff's Exhibit 426 and Record pp. 2400-1:

Feature Films Released During the 1943-44 Season By All Distributors

	No. of Films	Percentages of Total With "Westerns" included:	Percentages of Total With "Westerns" excluded:
Fox	33	8.31%	9.85%
Loew's	33	8.31%	9.85%
Paramount	31	7.81%	9.25%
RKO	38	9.57%	11.34%
Warner	19	4.79%	5.67%
Columbia	41	10.32%	12.24%
United Artists	16	4.04%	4.78%
Universal	49	12.34%	14.63%
Republic	29 features 30 "Westerns"	14.86%	8.66%
Monogram	26 features 16 "Westerns"	10.58%	7.76%
PRC	20 features 16 "Westerns"	9.07%	5.97%
Totals	397 335 without "Westerns"	100 %	100 %

ture of such interests whether such partial interest is in fee or through stock ownership or otherwise.

There is no evidence that in a city such as Cincinnati, in which a major defendant owns all of the first-run theatres, other exhibitors, affiliated or unaffiliated, have been prevented from also owning theatres for exhibition on first-run and there consequently is no monopoly in the legal sense, see *United States* v. *Pullman Company*, 64 F. Supp. 108, 112, and no reason for directing a divestiture. But when theatres are jointly owned by a major defendant and another party, it is evident that both joint owners wish to participate and indeed are directly or indirectly participating in the business of exhibiting motion pictures. In such case their joining of interests is illegal under the anti-trust laws for the reason that the major defendant thereby eliminates putative competition between itself and the other joint owner, who otherwise would be in a position to operate theatres independently. Such an elimination of competition is unreasonable in view of the defendant's being a powerful factor in the industry capable of exerting vast influence to its ends, and of the methods it has employed to restrain and control normal competition in distributing and exhibiting motion pictures through price-fixing, system of clearances, block-booking, pooling and the other practices we have alluded to.

We find such joint interests in a great number of theatres, a summary of which is set forth below,[11] and hold that they

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[11] In so far as information could accurately be obtained from RKO's Exhibit 11, the numbers of theatres jointly owned by the defendants are approximately as follows:

THEATRES JOINTLY OWNED WITH INDEPENDENTS:

Paramount	993
Warner	20
Fox	66
RKO	187
Loew's	21

THEATRES JOINTLY OWNED BY TWO DEFENDANTS:

Paramount-Fox	6
Paramount-Loew's	14
Paramount-Warner	25
Paramount-RKO	150

[fol. 3710] must be terminated by a sale to, or purchase from the co-owner or owners, or by a sale to a party not one of the other defendant-exhibitors. The decree or subsequent orders to be entered in conformity with this opinion will control sales or exchanges of such fractional interests for the purpose of restoring or creating a reasonable competition in the areas in question.

General Considerations

It may be said that such restrictions in commercial dealings as we would impose will interfere with the right of a copyright owner to choose his customers or contract for the disposition of his own property. The answer is that no such absolute right exists where its exercise will involve an extension of a copyright monopoly or an unreasonable interference with competition in the distribution and exhibition [fol. 3711] of moving pictures. A system of fixed admission prices, clearances and block booking is so restrictive of competition in its tendency that it should be modified to comply with the terms of the Sherman Act. The modifications in practices we have indicated will relieve conditions that have grown up through the years. Indeed the practices are de-

Loew's-RKO	3
Loew's-Warner	5
Fox-RKO	1
Warner-RKO	10
Total	1,501 Theatres

Of the above theatres jointly owned with independents, the following numbers will not be affected by the decree, since the defendant or co-owning independent owns less than a 5% interest:

Paramount	177
RKO	32
Total	209 Theatres

Total affected by the decree according to RKO's Exhibit 11 1,292 Theatres

fended on the ground that business convenience and long usage ought to sanction them. But, in spite of their long continuance, we cannot escape the conclusion that in various ways the system stifles competition and violates the law and that business convenience and loyalty to former customers afford a lame excuse for depriving others of rights to compete and for perpetuating unreasonable restrictions. The remedy we are giving against the infractions is certainly no more drastic in effect than the one the Supreme Court granted in *Interstate Circuit* v. *United States*, 306 U. S. 208, nor more severe than the one it imposed in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173. The defendants have built up great business enterprises in a very popular field. Yet they have carried on practices we have found unduly restrictive of interstate commerce and even though we do not suggest that they any more than "those eighteen upon whom the tower in Siloam fell" have been "sinners above all men", yet measures should be taken to restore the moving picture business to a condition of competition that will benefit both competitors and the general public and to abate practices that are unlawful.

It is argued that the steps we have proposed would involve an interference with commercial practices that are generally acceptable and a hazardous attempt on the part of judges—unfamiliar with the details of business—to remodel its delicate adjustments which have hitherto provided the public with what is a new and great art. But we see nothing ruinous in the remedies proposed. Disputes which may arise under the bidding system are likely to relate to questions whether the bidder has a theatre adequate for the run for which he bids, whether the clearance requested is reasonable as regards his own theatre and those of others, and [fol. 3712] similar matters generally involved in comparing bids. If the defendants will consent to an arbitration system for the determination of such disputes of the kind that has worked so well under the consent decree, they will facilitate the adjustment of most of the differences that are likely to occur, with a large saving of time and money as compared with separate court actions.

A suit in the district court for violation of the Sherman Act is doubtless an awkward way to cure such ills as have arisen, but it is perhaps the best remedy now available to the government. There surely are evils in the existing system, and the Sherman Act provides a mode of correction

which is lawfully invoked. At all events, that which is written is written, and is controlling on us.

It does not follow from the foregoing that we should wholly break up the exhibition business of each of the major defendants even though a "root and branch" decree might be legally possible. Such total divestiture would be injurious to the corporations concerned, and, if we are right in our analysis of the situation, we should still have to give relief against price-fixing, systems of clearance, formula deals, master agreements and franchises, block-booking, pooling agreements, and other agreements we have held invalid. The relief proposed we believe should suffice, while total divestiture would be damaging to the public as well as to the defendants and not accomplish any useful purpose at the present time.

The Decree

A decree is granted in accordance with the views expressed in the foregoing opinion to be settled on ten days' notice. It should provide for the dismissal of all claims asserted by the plaintiff against any of the defendants which act only as producers of motion pictures and for the dismissal of claims against any other defendants based on their acts as producers, whether as individuals or in conjunction with others.

[fol. 3713] The granting of licenses by any of the defendant-distributors which fix minimum prices for admission to theatres either of the defendants or of any other exhibitor should be enjoined in which such minimum admission prices are fixed by the parties either in writing, or through a committee, or through arbitration, or upon the happening of any event, or in any other wise.

The defendants should be enjoined from concertedly agreeing to maintain a system of clearances as among themselves or with other exhibitors, and no clearances should be granted against theatres in substantial competition with the theatre receiving a license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted. Existing clearances in excess of what is reasonably necessary to protect the licensees in the runs awarded to them shall be invalid pro tanto. In determining what is a reasonable clearance the following factors should be taken into consideration:

(1) The admission prices of the theatres involved, as set by the exhibitor;

(2) The character and location of the theatres involved, including size, type of entertainment, appointments, transit facilities, etc.;

(3) The policy of operation of the theatres involved, such as the showing of double features, gift nights, give-aways, premiums, cut-rate tickets, lotteries, etc.;

(4) The rental terms and license fees paid by the theatres involved and the revenues derived by the distributor-defendant from such theatres;

(5) The extent to which the theatres involved compete with each other for patronage;

(6) The fact that a theatre involved is affiliated with a defendant-distributor or with an independent circuit of theatres should be disregarded; and

[fol. 3714] (7) There should be no clearance between theatres not in substantial competition.

The further performance by any of the defendants of existing formula deals, master agreements to the extent that we have previously found them invalid, or franchises should be enjoined, and the defendants should also be enjoined from entering into or carrying out any similar agreements in the future.

Defendants owning a legal or equitable interest in theatres of ninety-five per cent or more either directly or through subsidiaries may exhibit pictures of their own or of their wholly owned subsidiaries in such theatres upon such terms as to admission prices and clearances and on such runs as they see fit.

No defendant or its subsidiaries shall exhibit its films other than on its own behalf or through wholly owned subsidiaries, or subsidiaries in which it has an interest of at least ninety-five per cent, without offering the license at a minimum price for any run desired by the operators of each theatre within the competitive area. The license desired shall in such case be granted to the highest responsible bidder having a theatre of a size and equipment adequate to show the picture upon the terms offered. The license shall be granted solely upon the merits and without discrimination in favor of affiliates, old customers, or any person whatever. Each license shall be offered and taken theatre by theatre and picture by picture. No contracts for exhibition shall be entered into, or if already outstanding shall be performed, in which the license to exhibit one feature is condi-

tioned upon an agreement of the licensee to take a license of one or more other features, but licenses to exhibit more than one feature may be included in a single instrument provided the licensee shall have had the opportunity to bid for each feature separately and shall have made the best bid for each picture so included. To the extent that any of the pictures have not been trade-shown prior to the granting of a license [fol. 3715] for more than a single picture, the licensee shall be given by the licensor the right to reject a percentage of such pictures not trade-shown prior to the granting of the license to be fixed by the decree. But that right to reject any picture must be exercised within ten days after there has been an opportunity afforded to the licensee to inspect it.

The defendants shall be enjoined from entering into or continuing to perform existing pooling agreements whereby given theatres of two or more exhibitors, normally in competition, are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee, or by one of the exhibitors, or whereby profits of the "pooled" theatres are divided among the owners according to pre-agreed percentages. They shall also be enjoined from making or continuing to perform agreements that the parties may not acquire other theatres in the competitive area without first offering them for inclusion in the pool. The making or continuance of leases of theatres under which defendants lease any of their theatres to another defendant or to an independent operating a theatre in the competitive area in return for a share of the profits shall be enjoined.

Each defendant shall cease and desist from ownership of an interest in any theatre, whether in fee or in stock or otherwise, in conjunction with another defendant-exhibitor. Each defendant shall cease and desist from ownership, jointly with an independent, of an interest in any theatre, greater than five per cent, unless such defendant's interest is ninety-five per cent or more; and where the interest of such defendant is more than five per cent and less than ninety-five per cent, such joint interests shall be dissolved either by a sale to, or by a purchase from, such co-owner or co-owners. Rearrangements of such joint interests with an independent, if by purchase, shall, however, be subject to the direction of this court so that their effectuation may promote competition in the exhibition of

motion pictures. Where a defendant owns a ninety-five or greater per cent interest in any theatre, such theatre may [fol. 3716] be considered as its own so far as this opinion and the decree to be entered hereon are concerned. Each of the defendants shall be enjoined from expanding its theatre holdings except for the purpose of acquiring a co-owner's interest in jointly owned theatres, and this only in cases where the court shall permit such acquisition, instead of requiring an outright sale of the undivided interest of the defendant in question. The foregoing provision as to divestiture of partial interests in theatres shall apply both to interests held in fee and beneficially and to those represented by shares of stock. But it shall not prevent a defendant from acquiring theatres or interests therein in order to protect its investments, or in order to enter a competitive field; if in the later case, this court or other competent authority shall approve the acquisition after due application is made therefor.

Each defendant shall be enjoined from operating, booking or film-buying through any agent who is also acting in such matters for any other exhibitor, independent or affiliated.

The decree shall also provide for arbitration of disputes as to bids, clearances, runs, and any other subjects appropriate for arbitration in respect to all parties who may consent to the creation of such tribunals for adjustment of such disputes. It shall also provide for an appeal board generally similar to the one created by the consent decree as to any parties consenting thereto. It shall make such disposition of the provisions of the existing consent decree signed November 30, 1940, as may be necessary in view of the foregoing opinion.

In order to secure compliance with the decree to be entered, duly authorized representatives of the Department of Justice shall on the written request of the Attorney General or the Assistant Attorney General in charge of anti-trust matters, and on reasonable notice to the defendant or defendants affected, be permitted reasonable access to all books and papers of the defendants and reasonable opportunity to interview their officers or employees, as provided in Section XVIII of the Consent Decree.

[fol. 3717] Proceedings under the decree to be entered shall be stayed pending appeal or for the purpose of

enabling the parties to adjust their business without an unfair burden or as practice may require upon such terms as the decree shall provide.

Jurisdiction of this cause shall be retained for the purpose of enabling any of the parties to the decree to apply to the court at any time for such orders or directions as may be necessary or appropriate for the construction or carrying out of the same, for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.

Findings should be proposed by the parties for the assistance of the court, but such proposed findings will form no part of the record.

Augustus N. Hand, U. S. Circuit Judge, Henry W. Goddard, U. S. District Judge, John Bright, U. S. District Judge.

Dated June 11, 1946.

[fol. 3718] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

Notice of Motion, Motion for Leave to Intervene and Intervening Petition of American Theatres Association, Inc., and Southern California Theatre Owners Association, et al.—Filed October 21, 1946

NOTICE OF MOTION

To Hon. Wendell Berge, Assistant Attorney General, Department of Justice, Washington, D. C.; Simpson Thacher & Bartlett, 120 Broadway, New York, New York, Attorneys for Paramount Defendants; Davis Polk Wardwell Sunderland & Kiendl, 15 Broad Street, New York, New York, Attorneys for Defendant Loew's, Inc.; George S. Leisure, Esq., 2 Wall Street, New York, New York, Attorney for Radio-Keith-Orpheum Corporation and affiliated Defendants; Joseph M. Proskauer, Esq., 11 Broadway, New York, New York, Attorney for Warner Defendants; Dwight, Harris, Koegel & Caskey, 100 Broadway, New York, New York, Attorneys for Twentieth Century-Fox Film Corporation and National Theatres Corporation, Defendants; Schwartz & Frohlich, 1450 Broadway, New York, N. Y., Attorneys for Defendant Columbia; Charels D. Prutzman, Esq., 1250 6th Ave., New York, New York, Attorney for Universal Defendants; and O'Brien, Driscoll & Raftery, 152 W. 42nd Street, New York, N. Y., Attorneys for Defendant United Artists Corporation

[fol. 3719] Please take notice that on October 1, 1946, or as soon thereafter as counsel may be heard, the undersigned intervening petitioners will move this Honorable Court for an order permitting them to intervene as parties in the above-entitled action, on and in accordance with the attached Motion for Leave to Intervene and the accompanying pleading designated as "Intervening Petition."

American Theatres Association, Inc., Southern California Theatre Owners Association (and various individual theatre owners named in the attached motion and pleading) by Thurman Arnold, Arnold & Fortas, 821- 15th Street, N. W., Washington 5, D. C.; Paul Williams, General Counsel to Southern California Theatre Owners Association, Attorneys for Intervening Petitioners.

[fol. 3720] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR LEAVE TO INTERVENE

American Theatres Association, Inc.; Southern California Theatre Owners Association; Joseph Moritz; Southern California Amusement Company, Inc.; Exhibitors' Service, Inc.; Lawrence Capitol, Inc.; Bijou Amusement Company and Paul Realty Company; Andy Anderson; Arch and Milas L. Hurley; Raymond and Willard Gervers; Gamble Enterprises, Inc.; and St. Louis Ambassador Theatre, Inc., Eden Theatre Company, St. Louis Missouri Theatre, Inc., and Fanchon & Marco Service Corporation move this Honorable Court for leave to intervene as parties in this action on behalf of themselves and others similarly situated. Intervention is sought as of right under Rule 24(a) of the Federal Rules of Civil Procedure. Their purpose in intervening is limited to asserting their defenses as set forth in their proposed pleading, a copy of which is attached, to the order proposed in the recent opinion of this Court, the effect of which will be to compel them as exhibitors to purchase their supplies of defendants' motion pictures by competitive bidding.

For ground of this motion your petitioners state that they are independent exhibitors and associations of exhibitors engaged in showing motion pictures at theatres throughout the country. They will be bound by the decree as more particularly set forth below and in the annexed pleading. Their interests are at present unrepresented in this action, particularly in relation to the proposed inclusion in the decree of a requirement that the defendants' motion pictures be sold to the "highest responsible bidder."

American Theatres Association, Inc., is a mutual improvement corporation, incorporated under the laws of the District of Columbia, having as its objective the fostering [fol. 3721] of the common interest of those engaged in the motion picture exhibition industry in the United States, and similar purposes and objects. It has an extensive membership throughout the country (over 6000 theatres) consisting of exhibitors of all types; independent exhibitors in large cities; independent exhibitors in small towns; independent exhibitors in competition with the majors; and exhibitors having no competition. Its membership, scat-

tered throughout the country comprehends chains of various sizes and, exhibitors of every type and class, having the most various arrangements with the majors.

The policy of the above named petitioner has been to impose no restrictive limitations on membership. Every kind of theatre is eligible to join. For that reason a small minority of its members are corporations wholly owned by the defendants in this suit. The interests of such members are already represented by counsel for the defendants. It is obvious that the interests of these members are not the same as the interests of independent exhibitors. Consequently said petitioner does not intend to and will not represent the interests of such members in this matter, and it is understood that no position which the Association takes in the course of this proceeding is in any way representative of the views which members owned by the defendant may entertain. Likewise the Association does not represent in this matter one other of its members which is not a defendant in this action, namely, the Skouras Theatres Corporation, which operates theatres in the metropolitan area of New York City. No part of the expense of prosecuting this petition will be borne by members of the Association owned by defendants in this suit or by Skouras Theatres Corporation, nor will their support, advice, or counsel be sought. The members which the Association represents in the prosecution of this motion comprise the great bulk of its membership.

The Association's membership also includes other associations of exhibitors. Its membership is in every respect representative. The membership has urged intervention in this proceeding and the Association has widely publicized its intention to bring the plight with which exhibitors are threatened by the proposed decree to the Court's attention. The act of intervention has been approved by the directors of the Association at a special meeting and the overwhelming body of the members of the Association of all types have expressed approval of this action.[1]

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[1] There have been some individual dissents, e. g. a vice president of the Association operating a large chain has expressed confidence that he has sufficient economic power to be able to survive under a competitive bidding system and that he is in favor of it. The *Film Daily*, September —, 1946.

The Southern California Theatre Owners Association is a non-profit corporation incorporated under the laws of California and has in its membership exhibitors of all types, including owners of single theatres and of large chains and independent theatre owners and owners having various [fol. 3722] degrees of affiliation with the majors. A decision to seek intervention has been made by the Board of Directors of the Association. This action has been widely publicized, and no dissent has been voiced by any of its members. The Association has directed coordination of its activities in this endeavor with the American Theatres Association, with which it is affiliated.

Joseph Moritz is the owner and operator of the Victor Theatre located at 1718 South Main Street, Los Angeles, California. He operates an independent, subsequent-run theatre in competition with all the theatres located in downtown Los Angeles. In the same competitive area are theatres owned by the majors, i.e., Fox West Coast, operating both first run and subsequent run and various other independent theatres operating first run and subsequent run.

The Southern California Amusement Company, Inc., is a California corporation with offices at 1824 South Vermont Avenue, Los Angeles 6, California. It owns or operates approximately 40 theatres in Southern California, about half of which are located in the city of Los Angeles. The theatres it operates in Los Angeles are all subsequent run theatres. The other theatres which it operates are located in various rural communities in Southern California and it has no first runs except in small towns which are subject to clearance of larger cities.

Exhibitors Service, Inc., is a California corporation which operates a complete theatre service including buying, booking and administration. It acts as the buying agent for a number of small independent theatres in the smaller towns in Southern California, Arizona and Nevada. Some of the theatres it represents have opposition from theatres affiliated with defendants and from independent circuits, whereas others have independent opposition or no opposition.

Lawrence Capitol, Inc. is a corporation organized and existing under the laws of the State of Massachusetts. Its capital stock is owned by Jeremiah Campopiano and Jean C. Campopiano. It operates an independent first run

theatre, the Capitol Theatre, at 139 Common Street, Lawrence, Massachusetts, in competition with four theatres affiliated with one of the defendants herein, two of which are first run houses, one a move-over first run house, and one a second run house, and all of which are larger than your petitioner's Capitol Theatre.

Bijou Amusement Company and Paul Realty Company are corporations organized and existing under the laws of the state of Rhode Island. Their capital stock is owned by Mr. Fred J. Greene and Mr. Raymond F. Murphy of Woonsocket, R. I. They operate two independent theatres: the Bijou Theatre, located at 273 Main Street, in Woonsocket, R. I. and the New Park Theatre, located at 37 N. [fol. 3723] Main Street, Woonsocket, R. I. Both of these theatres are first run houses. They compete with a first run theatre affiliated with one of the defendants in this action, which has a larger seating capacity than either of your petitioner's theatres.

Andy Anderson is the owner and operator of the following independent theatres: the Kentucky Theatre, with a seating capacity of 425, located in Hartford, Ky., the population of which is approximately 1,800 people; the Majestic Theatre, with a seating capacity of 265, located in Beaver Dam, Ky., the population of which is approximately 1,600 people; the Lincoln Theatre, with a seating capacity of 375, located in Hodgenville, Ky., the population of which is approximately 2,000 people. The aforementioned theatres are the only theatres in their respective towns, and all of them play first run and repeat run pictures.

Arch and Miles L. Hurley are individuals doing business under the name and style of Princess-Odeon Theatres who operate two independent theatres in the city of Tucumcari, New Mexico. These are the only theatres in Tucumcari, the population of which is less than 7,500 people.

Raymond Gervers and Willard Gervers are co-partners who own and operate the Uptown Theatre at 18 E. McMicken Street and the Fairview Theatre at 333 Warner Street in the city of Cincinnati, Ohio. These are independent subsequent run theatres which are not in competition with any theatres affiliated with the defendants in this action, their competition consisting of five other independent theatres.

Gamble Enterprises, Inc. is a corporation organized and existing under the laws of the State of Oregon, operated

by Ted R. Gamble, who, with his wife, owns its capital stock. It operates two independent subsequent run theatres, the Capitol and the Bagdad, in Portland, Oregon, both of which compete with theatres affiliated with one of the defendants in this action.

St. Louis Ambassador Theatre, Inc., Eden Theatre Company, St. Louis Missouri Theatre, Inc., and Fanchon & Marco Service Corporation are interrelated corporations organized and existing under the laws of the State of Missouri. They own and operate a group of independent first and subsequent run theatres in the city of St. Louis, Missouri. Their first run theatres are in competition with theatres affiliated with one of the defendants. Their subsequent run theatres compete with other independent subsequent run theatres.

Your petitioners seek to intervene for the sole purpose of being heard in this Court and on appeal in respect of the direction in the Court's opinion that the relief to be prescribed in the decree should include a provision to the following effect:

> [fol. 3724] "No defendant or its subsidiaries shall exhibit its films other than on its own behalf or through wholly owned subsidiaries, or subsidiaries in which it has an interest of at least 95 percent, without offering the license at a minimum price for any run desired by the operators of each theatre within the competitive area. *The license desired shall in such case be granted to the highest responsible bidder having a theatre of a size and equipment adequate to show the picture upon the terms offered.*" (Emphasis supplied.)

Your petitioners desire to intervene because if it is signed and entered the decree of this Court requiring the granting of licenses to the "highest responsible bidder" will drastically affect their access to the films necessary to operate their theatres and the values of their property. It will likewise impair the competitive positions which many of these theatres hold in the industry.

Your petitioners are entitled to intervene in these proceedings as of right, because otherwise they will be bound by a decree in the framing of which they will not have been represented and the effect of which upon their interests, as

vital as those of the major producers, will not have been adequately presented to the Court.

All the requirements of Rule 24(a) have been complied with.

A. Your petitioners' application for leave to intervene is timely.

The application was filed promptly after your petitioners had notice of the proposed prescription of competitive bidding. It is presented before the entry of the decree and in advance of the institution of appellate proceedings.

So far as your petitioners are able to ascertain, no such relief as "auction bidding" was ever prayed for by the Government either in its numerous pleadings or its various briefs. Rather, its final brief urged only divestiture and injunctive relief. Neither did the defendants at any time suggest or propose such a system. Not until the final oral arguments on the merits was there any reference to such a mechanism for the distribution of motion pictures. Even then discussion was limited to the most casual colloquy; there was no attempt to define competitive bidding, to elaborate arrangements for its operation, to discover how well or poorly it served the interests of exhibitors variously situated or of the public, or to explore its incidence upon other parties to the industry. And your petitioners' first knowledge that "auction bidding" was under serious consideration as a mode of relief came only with this Court's opinion of June 11, 1946. Your petitioners have moved for permission to intervene as parties as promptly after that date as it was possible to act. It took time to discover what was involved in that section of the decree and to assess the consequences of so novel an arrangement upon the [fol. 3725] fortunes of types of exhibitors who are very differently situated. And, after the somewhat protracted process of finding a common mind among exhibitors whose unlike arrangements with the majors fall only into a quite intricate pattern, it has taken time to translate the conclusions which have been reached into the necessary legal papers.

B. Your petitioners have a direct, specific and vital interest in the provision of the proposed decree for the exclusive sale of motion pictures (except to a "95 per cent

subsidiary" of the distributor) to the "highest responsible bidder."

A motion picture theatre requires continuous availability of film in order to operate. The defendants in this case produce and distribute the great bulk of all motion picture product and almost all quality product. Regulation of the terms on which almost all films may be licensed is, of course, regulation of the terms on which the exhibitors can buy. Consequently the decree requiring the defendants to license their pictures by competitive bidding is a direct regulation of the entire business of the exhibitors.

The proposal for competitive bidding will create a revolution in the business of all exhibitors. The proposal has been the central topic of discussion in the industry in recent months. Almost every exhibitor has expressed himself forcefully on the subject. The overwhelming majority of exhibitors are convinced that the system of competitive bidding will reinforce and strengthen the monopoly power of the major distributors and will so injure the independent exhibitors as to force many of them out of business, lead to their classification as lower run houses, or force them to become satellites of the majors. Even the strongest independent circuits will have difficulty facing the buying power of the majors under a competitive bidding system, and only the most optimistic face the prospect with anything but despair.

The exhibitors are the intended beneficiaries of the suit. It is to protect them against oppression by the majors that the present action is being prosecuted, and this is recognized by the Court's decree. Yet it is the almost unanimous judgment of the exhibitors that the proposed remedy will effect no constructive change in the situation. It will in fact aggravate the very troubles it was designed to cure. Your petitioners desire to present to this Court, and to the Supreme Court if necessary, the reasons why they believe competitive bidding will have these effects under the pattern of the motion picture industry. It is for that purpose that the present intervention is sought.

Whatever may be said of the right of the exhibitors as intended beneficiaries to control the course of the litigation at earlier stages, it is clear that at the present time the opinion of the court proposes an immediate imposition upon them of a system of business operation which their experi-

[fol. 3726] ence indicates will be disastrous. Under the circumstances the immediate interest of the exhibitors is clear, and their right to be heard through representative organizations and individuals is essential to prevent the imposition of a system of regulation upon them without the opportunity to urge their case.

C. The interests of the applicants are now or may be inadequately represented.

It cannot be said now that independent exhibitors are adequately represented by the Attorney General, as was said earlier while the concern of the case was to establish monopolistic and restrictive practices on the part of the majors. That matter is now finished business. At this stage the concern of the case is to contrive a remedy for the wrongs which have been found. That remedy, set down in the decree, vitally affects the interests of various classes of exhibitors. These varied interests, and the incidence of the proposed "competitive bidding" have never been presented to the Court. In the absence of such concrete presentation, the Court can only frame its decree in the light of the way in which competitive bidding might generally be expected to work. But the motion picture industry is a distinctive industry. The pictures are leased, not sold; there is neither a standardized product nor a standard by which product can be measured. An auction market, without a standard unit, is hard to visualize. It is an argument on this subject, with concrete illustrations which it is the very purpose of this intervention to elaborate. Thus, even if at one stage, the Attorney General can be said to have represented the exhibitors, it is clear at this point, because his views on competitive bidding are diverse from theirs, that he no longer does so.

As has been indicated above exhibitors of all classes are almost unanimously opposed to the requirement of competitive bidding. The Government, on the other hand, has indicated no disposition to oppose it. Indeed during the final oral arguments on the merits Mr. Wright, government counsel, himself advanced the suggestion that competitive bidding might be proper. He stated specifically, "I see no reason why they [motion pictures] should not be sold competitively . . . I do not see why they should not go on the auction block." In the light of this statement, there

can be no question that if the Government is proposing to represent the applicants' interests, its representation is not only inadequate but will also prove misleading.

Certainly no other party, whether in industry or within the Government, can even claim to represent the interest of exhibitors. Consequently, the petitioning exhibitors and others similarly situated face the very real prospect that the Government will ignore the incidence of competitive bidding upon the posture of various classes of exhibitors [fol. 3727] and will direct its attention to other matters of much less concern to exhibitors. Furthermore exhibitors have no assurance that the Government will not drop the matter without exhausting appellate proceedings to reverse any decree which may be instituted to compel competitive bidding. Representation must be either by representatives of one's own choosing or else by persons whose own situation impels them to serve the interests in question. While the suit was in trial the exhibitor might be regarded as only incidentally involved—at that time representation by the Attorney General might be adequate. However, when relief of the type here contemplated is considered, the exhibitor's interest becomes not only direct but dominant. He can be protected only by representatives of his own choosing.

D. Applicants and those they represent will be bound by a judgment in this action to an extent necessary to require their admission to the proceedings as intervening parties.

It is an undisputable fact that a court decree dictating the sale by auction of defendant's motion pictures directly governs your applicants' method of doing business. Almost the entire business of your applicants depends upon obtaining the defendants' product, and such product can be obtained only on the terms upon which this court requires the defendants to sell their product. If, as petitioners believe, competitive bidding will increase the power of the defendants and will accentuate the power of the strong and the weaknesses of the small independent operator, no practical remedy exists except through the admission of your petitioners as parties to this action. For if, as applicants believe, the bidding system will inevitably destroy almost all independents faced with the power of the majors, the proposed decree will in practical effect deprive an independent of relief. For what can be the chances of success in an

antitrust suit of an independent driven out of business by the majors as a result of the competitive bidding system when he is faced with a defense that what the majors did was required by the decree of this Court? The exhibitors are convinced that the decree would legalize and extend the exercise of the gigantic power of the majors which otherwise would be illegal. The obstacle the decree would create to full relief is an imposition binding on exhibitors and one which they are entitled to attempt to remove.

E. Intervention at this stage will not hamper or unduly delay the proceedings.

The interests of your petitioners require no more than their representation as parties to the proceedings for the limited purposes of entitling them to be heard on the form of the decree insofar as it relates to competitive bidding and of protecting their right to appeal from an adverse decision solely on that subject. The allowance of this petition will [fol. 3728] not and cannot be used as an occasion to encumber the record with additional evidence or to delay these proceedings. All of the facts on which petitioners' argument will be based are already in the record or else can be found from authoritative statistical compilations or common knowledge within the industry of which the court can take judicial notice. The argument of petitioners will consist of an economic analysis of these facts. It will be presented prior to the convening of this Court on October 21, 1946.

F. Intervention by exhibitors will not be unwieldy.

The fears expressed that intervention would result in great numbers of exhibitors desiring to appear will not materialize in this case. Exhibitors have a right to intervene. However, it is true that they are "so numerous as to make it impracticable to bring them all before the court." See Rule 23, Federal Rules of Civil Procedure. Under the circumstances the court should permit intervention by such of them "as will fairly insure the adequate representation of all." See id. This task has been performed for the court by the exhibitors themselves. They are organized into associations. The associations have to a large extent cooperated in presenting to the court typical groups and individual exhibitors. American Theatres Association is

an organization of the most widely representative character representing exhibitors of all types throughout the country and including in its petition a typical regional association, the Southern California Theatre Owners Association, and individual members of various types. And the individual petitioners who are parties to this motion include independent exhibitors of practically every type and situation.

Wherefore, your petitioners pray this Court to enter an order admitting them as parties to this action for the limited purpose of appearing and of being heard in opposition to the entry of such part of the decree as may require the sale of defendants' motion pictures to "the highest responsible bidder" and to grant your petitioners such other and further relief as to the Court may seem appropriate.

Respectfully submitted, Thurman Arnold, Arnold & Fortas, 821 15th St., N. W., Washington, D. C.; Paul Williams, General Counsel to Southern California Theatre Owners Association, Attorneys for Intervening Petitioners.

September 20, 1946.

[fol. 3729] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENING PETITION

American Theatres Association, Inc.; Southern California Theatre Owners Association; Joseph Moritz; Southern California Amusement Company, Inc.; Exhibitors' Service, Inc.; Lawrence Capitol, Inc.; Bijou Amusement Company and Paul Realty Company; Andy Anderson; Arch and Milas L. Hurley; Raymond and Willard Gervers; Gamble Enterprises, Inc.; and St. Louis Ambassador Theatre, Inc., Eden Theatre Company, St. Louis Missouri Theatre, Inc., and Fanchon & Marco Service Corporation respectfully represent for a defense or answer to the proposed plan of competitive bidding set out in the court's opinion, that

(1) The above named petitioners are exhibitors of motion pictures not owned by the defendants in this proceeding and associations which appear only on behalf of the majority of their members who are not owned by said defendants.

(2) The plan of competitive bidding will not carry out the purpose of the decree to create competition in the motion picture industry; nor will it provide a mechanism to prevent the domination of that industry by the defendants in this suit, which domination the court found in its opinion.

(3) The defendant-producers and their affiliates have resources available for bidding upon pictures and for the purchase of pictures which far exceed the available resources of independent exhibitors, including your petitioner-exhibitors and the exhibitors represented by your petitioners. Any plan of competitive bidding for pictures approved by the court will enable and authorize defendants and their affiliates to use their superior bargaining power to strengthen their monopolistic position. Accordingly, the basic purpose of the court will be defeated by this provision.

(4) At the same time, your petitioner-exhibitors, exhibitors represented by your petitioners and independent exhibitors generally will be deprived of existing protection [fols. 3730-3735] and benefits under the anti-trust laws without receiving proportionate protection from monopolistic practices from this court's decree. This will result as follows:

(a) The determination of the best competitive bid must necessarily depend not only upon price, but also upon a variety of other factors of uncertain weight, such as the location of the theatre, the reputation and good will of the exhibitor, type of patronage of the exhibitor, clearance, length of run, and the infinite variations of time, place and type of exhibition.

(b) These factors are of such variety, complexity and diverse weight that the judgment as to which is the "highest responsible" bid must necessarily be entrusted to the producer or distributor, within broad and practically meaningless limits.

(c) For such reasons and because of the thousands of individual transactions involved, effective supervision by this court of the performance of its decree with respect to competitive bidding cannot be expected.

(d) Accordingly, competitive bidding, if decreed by this court, will be competitive in name only. In result it will be merely a mechanism of distribution which can and will (1)

deprive independent exhibitors of the protection which the antitrust laws now provide against the use by defendants and their affiliates of their superior economic and strategic power to monopolize the market; and (2) legitimatize the domination of the market already condemned by this court.

(5) Your petitioner-exhibitors, exhibitors represented by your petitioners, and all other exhibitors who are not affiliates of defendants will accordingly be irreparably injured if the competitive plan for bidding for motion pictures is made part of the decree.

Wherefore, your petitioners pray that the plan for competitive bidding proposed by the opinion of this court be not promulgated as part of any decree which the court may make.

Respectfully submitted, Thurman Arnold, Arnold & Fortas, 821 15th St., N. W., Washington, D. C.; Paul Williams, General Counsel to Southern California Theatre Owners Association, Attorneys for Intervening Petitioners.

September 20, 1946.

[fol. 3736] [File Endorsement Omitted]

Motion for leave to file brief as amicus granted. They may also be heard on the settlement of the decree and findings. Motion to intervene denied.

A. N. H. *U. S. C. J.* H. W. N. *U. S. D. J.* J B *U S D J*

10/21/46,

Settle order on the above on notice

A. N. H. *U. S. C. J.* H W N *U. S. D. J.* J B *U S D J*

12/16/46

[fol. 3737] IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Equity No. 87-273

UNITED STATES OF AMERICA, Plaintiff,

against

PARAMOUNT PICTURES, INC., *et al.*, Defendants.

W. C. ALLRED; CHARLES E. BEACH and ELIZABETH L. BEACH, partners trading as Beach and Beach; Biscayne Beach Theatre, Inc.; T. N. Carnahan; Central Amusement Company, Incorporated; Emma Cox; W. F. Crockett, David Pender, Jr., Thelma H. Crockett and Mrs. E. P. Thompson, partners trading as Bayne-Roland Theatres; H. A. Everett; William R. Griffin, Sallie M. Wise and Frank V. Merritt, partners trading as Cullman Amusement Company; Nat Hancock; J. O. Harris and E. L. Harris, trading as J. O. and E. L. Harris; J. B. Harvey; Lexington Amusement Company, Inc.; M. C. Moore; W. W. Mowbray; Neighborhood Theatre, Inc.; Palace Amusements, Inc.; Benjamin T. Pitts; Henry Reeve; Ritz, Inc., Theatre; Strand Amusement Company, Incorporated; The Southern Amusement Company, Incorporated and Sidney Wharton; Petitioners for Intervention.

NOTICE OF MOTION

Sirs:

PLEASE TAKE NOTICE that the attached motion by petitioners for intervention will be made at a Stated Term for the hearing of motions of this Court to be held in and for the Southern District of New York, in the United States Court House, Foley Square, Borough of Manhattan, City, County and State of New York, on the 1st day of October, 1946, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated: New York, N. Y. September 25, 1946. Yours, etc., John G. Jackson, Attorney for W. C. Allred, et al., Petitioners for Intervention. Jackson, Nash, Brophy, Barringer & Brooks, 15 Broad Street, New York, N. Y. Christian, Barton, Parker & Boyd, 909 East Main Street, Richmond, Virginia.

[fol. 3738] To:

Robert L. Wright and Harold Lasser, Attorneys for Plaintiff, 30 Broad Street, New York, N. Y.

Simpson Thacher & Bartlett, Attorneys for Paramount Defendants, 120 Broadway, New York, N. Y.

Davis Polk Wardwell Sunderland & Kiendl, Attorneys for Defendant Loew's, Inc., 15 Broad Street, New York, N. Y.

Donovan Leisure Newton & Lumbard, Attorneys for Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, RKO Proctor Corporation and RKO Midwest Corporation, Two Wall Street, New York, N. Y.

Joseph M. Proskauer and Robert W. Perkins, Attorneys for the Warner Defendants, 11 Broadway, New York, N. Y.

Dwight, Harris, Koegel & Caskey, Attorneys for Twentieth Century-Fox Film Corporation and National Theatres Corporation, Defendants, 100 Broadway, New York, N. Y.

Schwartz & Frohlich, Attorneys for Defendant Columbia, 1450 Broadway, New York, N. Y.

Charles D. Prutzman, Attorney for the Universal Defendants, 1250 Sixth Avenue, New York, N. Y.

O'Brien, Driscoll & Raftery, Attorneys for the Defendant United Artists Corporation, 152 West 42nd Street, New York, N. Y.

[fol. 3739] In the United States District Court

[Title Omitted]

Motion to Intervene as Parties Defendant under Rule 24 of the Rules of Civil Procedure

W. C. Allred; Charles E. Beach and Elizabeth L. Beach, partners trading as Beach and Beach; Biscayne Beach Theatre, Inc.; T. N. Carnahan; Central Amusement Company, Incorporated; Emma Cox; W. F. Crockett, David Pender, Jr., Thelma H. Crockett and Mrs. E. P. Thompson, partners trading as Bayne-Roland Theatres; H. A. Everett; William R. Griffin, Sallie M. Wise and Frank V. Merritt, partners trading as Cullman Amusement Company; Nat Hancock; J. O. Harris and E. L. Harris, trading as J. O. and E. L. Harris; J. B. Harvey; Lexington Amusement Company,

Inc.; M. C. Moore; W. W. Mowbray; Neighborhood Theatre, Inc.; Palace Amusements, Inc.; Benjamin T. Pitts, Henry Reeve; Ritz, Inc., Theatre; Strand Amusement Company, Incorporated; The Southern Amusement Company, Incorporated and Sidney Wharton, move for leave to intervene as defendants in this action in order to assert the matters set forth in their petition, of which a copy is hereto attached, on the grounds that the applicants are severally exhibitors of motion pictures who are unable to conduct their several businesses as exhibitors without licensing pictures for exhibition from the defendants, due to the fact that pic-
[fol. 3740] tures which may be licensed from others than defendants do not provide an adequate supply of pictures, and the applicants will be irreparably damaged by being required to license such pictures only by successful bids at auction sales as directed in the opinion filed in this action on June 11, 1946; the said directions are not authorized by law; and the representation of the applicants' interests by existing parties is inadequate and the applicants will be bound by a judgment in the action.

John G. Jackson, Attorney for W. C. Allred, et al., Petitioners for Intervention. Jackson, Nash, Brophy, Barrington & Brooks, 15 Broad Street, New York, N. Y. Christian, Barton, Parker & Boyd, 909 East Main Street, Richmond, Virginia.

[fol. 3741] IN THE UNITED STATES DISTRICT COURT

[Title Omitted]

PETITION TO INTERVENE AS PARTIES DEFENDANT UNDER RULE 24 OF THE RULES OF CIVIL PROCEDURE

The petition to intervene as parties defendant under Rule 24 of the Rules of Civil Procedure, of

Names of Petitioners	*Principal Offices of Petitioners*
W. C. Allred	Greensboro, North Carolina
Charles E. Beach and Elizabeth L. Beach, partners trading as Beach and Beach	Fernandino, Florida

Names of Petitioners	*Principal Offices of Petitioners*
Biscayne Beach Theatre, Inc.	Miami Beach, Florida
T. N. Carnahan	Sulphur, Louisiana
Central Amusement Company, Incorporated	New Orleans, Louisiana
Emma Cox	Osceola, Arkansas
W. F. Crockett, David Pender, Jr., Thelma H. Crockett and Mrs. E. P .Thompson, partners trading as Bayne-Roland Theatres	Virginia Beach, Virginia
H. A. Everett	Magee, Mississippi
[fol. 3742]	
William R. Griffin, Sallie M. Wise and Frank Merritt, partners trading as Cullman Amusement Company	Cullman, Alabama
Nat Hancock	Jefferson, Georgia
J. O. Harris and E. L. Harris, trading as J. O. and E. L. Harris	Dallas, Texas
J. B. Harvey	Clover, South Carolina
Lexington Amusement Company, Inc.	Lexington, Tennessee
M. C. Moore	Jacksonville, Florida
W. W. Mowbray	Blue Ridge, Georgia
Neighborhood Theatre, Inc.	Richmond, Virginia
Palace Amusements, Inc.	Newport News, Virginia
Benjamin T. Pitts	Fredericksburg, Virginia
Henry Reeve	Menard, Texas
Ritz, Inc., Theatre	Columbia, Mississippi
Strand Amusement Company, Incorporated	Laurel, Mississippi
The Southern Amusement Company, Incorporated	Lake Charles, Louisiana
Sidney Wharton	Warren, Arkansas

respectfully shows as follows:

Directions of the Court Sought To Be Eliminated.

1. Under date of June 11, 1946, this Court rendered its opinion in the above entitled action and in said opinion

without authority of law, directed that the decree to be entered thereon provide among other things the following:

> "No defendant or its subsidiaries shall exhibit its films other than on its own behalf or through wholly owned subsidiaries, or subsidiaries in which it has an interest of at least ninety-five per cent, without offering the license at a minimum price for any run desired by the operators of each theatre within the competitive area. The license desired shall in such case be granted to the highest responsible bidder having a theatre of a size and equipment adequate to show the picture upon the terms offered. The license shall be granted solely upon the merits and without discrimination in favor of affiliates, old customers, or any person whatever. Each license shall be offered and taken theatre by theatre and picture by picture. No contracts for exhibition shall be entered into, or if already outstanding shall be performed, in which the license to exhibit one feature is conditioned upon an agreement of the licensee to take a license of one or more other features, but licenses to exhibit more than one feature may be included in a single instrument provided the licensee shall have had [fol. 3743] the opportunity to bid for each feature separately and shall have made the best bid for each picture so included. To the extent that any of the pictures have not been trade-shown prior to the granting of a license for more than a single picture, the licensee shall be given by the licensor the right to reject a percentage of such pictures not trade-shown prior to the granting of the license to be fixed by the decree. But that right to reject any picture must be exercised within ten days after there has been an opportunity afforded to the licensee to inspect it" (66 F. Supp. 323, 358).

Associations Supporting Petition

2. The following associations of exhibitors have the purpose, among others of promoting the interests of exhibitors in the States indicated by their names. Each Association has approved and is supporting this application for leave to intervene.

Name of Associations	Addresses	No. of Theatres	No. of Seats	Percentages of Theatres in Area
M. P. T. O. of Virginia	Richmond	160	110,000	65%
Theatre Owners of North and South Carolina, Incorporated	Charlotte	384	220,000	61½%
Texas Theatre Owners, Incorporated	Menard	800	600,000	75%
* Southeastern Theatre Owners Association	Atlanta	900	569,500	100%

* Its area is northern Alabama, eastern Tennessee, Georgia and Florida.

The members of the associations include theatres owned by defendants, but no contributions have been made by any of them to the expense of the intervention or will be accepted by petitioners or said associations; the members also include "Paramount partners" or their theatres, who have made or will make contributions to that expense.

Varied Characteristics of Petitioners

3. Every petitioner is an independent exhibitor, as that term is defined in the opinion. No petitioner is a partner of, or otherwise financially interested in the business of another petitioner. Petitioners include some exhibitors which are not circuits † and some which are circuits. The theatres of petitioners include downtown and neighborhood theatres; some exhibit features first run, some second run, some subsequent run, and some vary their practices as to run. Some exhibit single feature programs, some double feature programs, and some exhibit double feature programs on certain days of the week and single feature programs on other days of the week. Some of the theatres of petitioners are in a city or town where there is no theatre except the theatre or theatres of one petitioner; some are in [fol. 3744] a city or town where there are theatres of competing exhibitors. In one or more cities or towns competing exhibitors include only independent exhibitors; in one or more they include defendants. In one or more cities or

† The word "circuit" as used herein means an exhibitor who operates six or more theatres.

towns where there is competition a petitioner is a circuit, and has circuit competition; in one or more no competitor is a circuit; in one or more one exhibitor is a circuit and one is not. Some of the first-run theatres of petitioners are in the same or a nearby city block with second or subsequent run theatres of their competitors. In these situations the lower admission charges to the second or subsequent run theatres render them unusually competitive with the first-run theatres of petitioners, notwithstanding difference of run.

The seating capacities of the first-run theatres of petitioners vary from 1396 to 270. The seating capacities of their second and subsequent run theatres vary from 1440 to 194. The seating capacities of some of the first-run theatres of defendants which compete with some of petitioners are largely in excess of the seating capacities of the first-run theatres of said petitioners in the same cities or towns. The same is true as to the seating capacities of some of the first-run theatres of independent competitors with one or more of petitioners. But in one or more of those cities and towns a petitioner has more than one first-run theatre and the combined seating capacity of those theatres substantially equals or exceeds the seating capacity of the competitor's theatre.

Conditions Necessary for Profitable Operation by Petitioners

4. In the conduct of their business petitioners have invested substantial amounts of money in theatre buildings and in the equipment, furnishing and decorating of the buildings, and in the building up of goodwill for their theatres by advertisement thereof and by service to the public; they employ numerous theatre managers, film buyers and bookers, general office workers, electricians, projector operators, ticket sellers and takers, ushers, cleaners, and workers in other categories. They buy substantial quantities of supplies; and they pay substantial amounts of property and license taxes to the states and their subdivisions. In order for the business of a petitioner to be operated at a reasonable profit, it is necessary that its theatre or theatres be accessible to its patrons, adequately equipped, furnished and decorated; that the prices of admission be reasonable; that the pictures exhibited shall be of a character to attract the public; that the performers in the features be individuals with large popular followings; that an adequate and continuous

flow of suitable pictures be assured; and that the exhibitions be well publicized in advance. The amount paid to the licensors of motion pictures is the largest item of expense of a first-run theatre, and is a substantial item of the expense of every theatre. In order for the business of a petitioner to be operated at a reasonable profit, it is necessary that the amount paid to licensors be reasonable. At least seventy (70%) per centum of all pictures are distributed by one or another of the defendants in this action and become available for exhibition only under license from a defendant. No petitioner can conduct its business profitably without exhibiting pictures licensed by one or more of the defendants.

[fol. 3745] Considerations Other Than Amounts of Film Rental Which Are Material in the Procurement of Licenses

5. In the conduct of the business of petitioners, they have found numerous factors to be materially helpful to an exhibitor in the effort to license features of a distributor for exhibition. The factors include the following: that the exhibitor be willing to agree to pay for the licenses a percentage of its gross receipts from admissions during the periods of the exhibitions; that the exhibitor shall be believed to be wholly honest in his accounting to the distributor. and to maintain complete and accurate box-office records; that the exhibitor be efficient; that the exhibitor shall furnish efficient service to the public in respect of selling and taking of tickets, ushering, projector operation, comfortable seats, cleanliness, rest rooms, and the like; that the exhibitor cooperate with the distributor in the advance exploitation of features, by substantial advertising paid for by the exhibitor, and in particular in exploiting features by appropriate use of publicity material and devices made available by the distributor; that the exhibitor shall not be unreasonable in his requests for adjustments of prices or for cancellations of licenses, or unreliable, unpleasant or unreasonable in the booking and in the other numerous contacts and transactions which are incidental to the execution of the license agreements from the time they are made until they are fully performed.

Certain Advantages of the Present System of Licensing

6. Up to the present time petitioners have had the opportunity to discuss the values of pictures for exhibition by them and to bargain as to the amounts of rental to be charged. Petitioners have been able to procure an adequate and steady flow of features and shorts for exhibition in their theatres under this system, without being required to pay such minimum fixed or percentage rentals therefor as may originally be demanded by the distributors, and without being required to be the highest bidders therefor. Petitioners have not been required to license the pictures theatre by theatre or picture by picture, but have been able to license a picture for exhibition in more than one theatre under one agreement, and to license more than one picture under one agreement. A petitioner which operates more than one theatre on the same run in a particular city or town has been able to license a feature for exhibition in such one of the theatres as he may thereafter select. Some of petitioners have exercised all of these privileges and have found them materially valuable. Each petitioner has also been enabled, subject to his conformity with the conditions mentioned in the preceding paragraph hereof, to have available for exhibition in his theatres, all of the pictures distributed by one or more of the defendants, over a period of years, either under agreements made annually, or under agreements made with respect to individual pictures or with respect to small blocks of pictures.

[fol. 3746] Rental Value of a Feature Varies in Different Localities, and Post-Exhibition Adjustments of Rental Are Often Necessary and Are Made Under Present System

7. Features are very much more favorably regarded by the public, and are very much more popular, in some localities than in other localities. Sometimes the subject of a feature will cause it to be clearly discernible both to the distributor and to potential exhibitors of the feature that it will not be attractive to the public in a particular locality; but as to other features popular in certain localities, there are sharp differences of opinion between the distributors and the potential exhibitors as to whether they will be equally popular, or more or less popular in a particular locality. The result of such differences of opinion is that a

distributor of a feature will frequently consider that it is much more valuable to an exhibitor in a particular locality, than the exhibitor considers it to be. Petitioners find themselves frequently in that situation. It is recognized by both exhibitors and distributors that a motion picture, unlike the ordinary marketable commodity, is of uncertain value and that the principal hazard of the business of both is the unpredictability of the public taste. For this reason, and also because it is to the economic interest of the distributors that their outlets operate at a profit, it has been a general practice that when such differences of opinion arise the petitioner will agree to pay the rental demanded by the distributor for the feature, and if the petitioner proves to be correct in his prophecy that the feature will not be attractive to the public in his locality, as evidenced by the gross receipts from its actual exhibition there, the distributor will lower the amount of the rental agreed to be paid, by an equitable amount. In many instances a potential exhibitor among petitioners will agree with a distributor that a feature which has proven attractive to the public elsewhere will prove equally attractive to the public in the locality of that exhibitor. The event will prove that for one reason or another, sometimes made known to the exhibitor by the expression of criticism and opinion by his patrons, and sometimes never known, the public in that locality does not find the feature attractive, and the gross receipts from its exhibition are unexpectedly small. In these situations it has been the general practice of the defendants in their dealings with petitioners to make equitable reductions of rental and they have frequently been made.

The expenses of the operation of a theatre, other than the amount of its expense for film rental are very stable from week to week and month to month. They are not substantially increased when the gross receipts from admission charges are unusually large, nor are they substantially decreased when the gross receipts from admission charges are unusually small. An exhibitor may reasonably pay a larger percentage of his gross receipts, as rental for the pictures exhibited, during a period when the gross receipts are unusually large, than he may reasonably pay during a period when his gross receipts are unusually small, because the larger the gross receipts the smaller is the percentage of them which is represented by the expenses other than film

rental, and the larger is the percentage of the gross receipts remaining available for the payment of film rental and for the provision of profit to the exhibitor. While [fol. 3747] adjustments in rentals of pictures which are rented at fixed amounts of rental are made for the reasons above set out, it is especially material to petitioners to have been able to procure such adjustments when the rentals of pictures are a stated percentage of gross receipts. It frequently happens that the licensing agreement between a defendant distributor and a petitioner will provide for the payment by the petitioner to the distributor of a certain stated percentage of the gross receipts of the exhibitor during the period of the exhibition of the picture, provided that such gross receipts shall not exceed a stated amount, but will require the payment of higher percentages of said gross receipts, if the said gross receipts shall exceed said amount to stated extents.

Petitioners operating on a double feature policy ordinarily exhibit one very attractive and one less attractive feature, and naturally pay a larger amount of film rental for the former than for the latter. When a theatre operates on a mixed policy, sometimes exhibiting single feature programs, sometimes double, it is not always known when a picture is licensed that it will be exhibited as a part of a double feature program, and in those situations, if it shall be so exhibited, its rental is frequently reduced in consideration of the gross receipts and the exhibitors' expenses being increased by the exhibition of the other feature.

If petitioners should be precluded from receiving the benefits of the adjustments mentioned in this paragraph, or if they should be precluded from making the "sliding scale" agreements referred to in this paragraph, the business of petitioners would be rendered materially more hazardous, the attractiveness of their programs to the public and their opportunity to make reasonable profits, would be materially lessened.

Booking of Pictures

8. When one of the petitioners shall have licensed a feature for exhibition, only the first one of two agreements essential to its exercise of the exhibition privilege has been accomplished, for the booking of the picture still remains to be done. As elsewhere alleged, in order to operate each of his theatres efficiently, an exhibitor must have a steady flow of features attractive to the public, one of which must

be in his hands to be exhibited in each theatre when the exhibition period of another feature has terminated. Feature programs of the theatres of petitioners are changed from once a week to four times a week. Occasionally, a popular feature will be exhibited for a longer period than usual. It may be substantially damaging to an exhibitor to exhibit in a particular theatre (except for a specialized type, as an "action" theatre, in the main exhibiting "westerns" and melodramatic features) successively or at close intervals of time, two or more pictures of the same type; *i.e.*, western, crime, comedy, historical, musical, etc.; or to book for his theatre a feature of a particular type at the same time that a feature of the same type is being exhibited by a competing theatre. Only a portion of the total features licensed for exhibition in a particular theatre are outstanding attractions. It is more profitable to space them among the programs than to have a substantial period of exceptional [fol. 3748] ly attractive programs, followed by a substantial period of mediocre ones. If a theatre is in a city or town other than a key town, a feature should be booked as closely as possible after its run in the nearest key town. When the feature of a program is mediocre, the shorts should be exceptionally entertaining. If a feature is unusally brief, the shorts should be more substantial, in order to have a well balanced program acceptable to the public; and the reverse is true. Features expected to be outstandingly popular with the public should primarily be booked for preferred playing times (as Saturdays, Sundays, or holidays); in many situations it is advisable to book for Sunday a different picture from the one booked for Saturday.

The booking for a theatre consists of arranging for pictures to be exhibited according to the foregoing principles, and efficient booking is essential to the efficient operation of a theatre. As a rule, features are not even theoretically "available" for exhibition at the dates they are licensed, but become theoretically "available" at later dates of which notices are given to licensees. When notice of availability is received, licensees are informed that a limited number of prints is available for use in rotation by the whole number of theatres in the geographical area of the distributors' exchanges in which the theatres are located. This number is invariably far less than the number desired by the exhibitors for immediate exhibition in the theatres of

the exchange area. The bookers for the several licensees must then book a print of the feature for each of their various theatres in which it is to be exhibited, *i. e.*, agree with the exchange on the precise date the print is to be received at the theatre and the date of the commencement of its exhibition.

The booker for a theatre maintains a tentative schedule for the exhibition of features therein, at dates when he hopes prints will be available, for a month or two in advance of exhibition dates. The booker is greatly aided in this schedule planning by being able to anticipate that there will become available for exhibition in the theatre, all of the features distributed by those distributors who usually make all their features available for such exhibition. When he finds he is unable to secure a print of a particular feature at the date tentatively scheduled by him, as frequently occurs, he must arrange through the exchange of its distributor, to procure a substitute from among the other features currently under license, or in emergency when none such is available must arrange for the theatre to license another feature suitable and available which can be booked for the desired date. His schedule will be altered from time to time as new features are licensed, or the licenses for the exhibition of features are cancelled because the feature for one reason or another comes to be considered unsuitable for exhibition.

The degree of the booker's efficiency and the consequent degree of success of the operation of his theatre inevitably depends materially upon the ability and personality of the booker and the personal relations existing between him and the personnel at the distributors' exchanges, and the extent to which the booker is thought reasonable, fair, considerate, reliable, courteous, forehanded in his negotia- [fol. 3749] tions and transactions with them. The booking of shorts presents lesser problems than the booking of features, and suitable shorts are less difficult to book than are features, but the efficient booking of shorts is also material to the efficient operation of a theatre. When a booker is responsible to book for more than one theatre, not only does the volume of his duties increase, but the complexity of his duties increases greatly, since a change in his schedule for one theatre often renders necessary or advisable changes in the schedules for others.

Some Disastrous Results of the Auction Selling System

9. The directions by the court with reference to auction selling as set forth in Paragraph 1 above will:

(a) Inflict irreparable damage upon each petitioner by causing him to suffer material losses. Such losses will inevitably accrue to all petitioners from the denial to them of the bargaining processes, and the freedom to contract according to the varied methods as alleged in Paragraph 6 above and the benefits of equitable post-exhibition adjustments of film rentals as alleged in Paragraph 7 above. Material losses to each petitioner will result from the fact that an exhibitor cannot determine at the time of making a bid for the privilege of exhibiting a feature in his theatre, the probable value to him of the license to exhibit the feature without knowing the date at which it will be received by him for exhibition and also knowing what other features will be in his hands for exhibition at that date, and the extent of his obligations to exhibit the latter at that date. Material losses to each petitioner will result from the fact that of the bids made by him, an unpectedly large proportion during particular periods of time will sometimes be unsuccessful. This will cause him to be from time to time, at least for short periods, without any features for exhibition, or else without a sufficient number of attractive ones. The bulk of his expenses must continue undiminished during these periods. Material losses will accrue to each petitioner because an unexpectedly large number of his bids will sometimes be successful during particular periods and he will be over-bought, from time to time, at least for short periods, and will not be able to exhibit all of the purchased pictures in such a manner as to secure an increase of gross receipts sufficient to offset his increase of film rentals. In some instances he will not have enough playing time to enable him to comply with the playing obligations of his license agreements. Material losses will accrue to each petitioner because of his uncertainty at all times as to which of his contemplated or open bids will be successful and which will be unsuccessful. This uncertainty will require him to make bids for an undesired number of pictures of the same type, with the hope that his bids for a

desired number, and no more, will be successful, and at the risk that too many or too few bids for pictures of a particular type will be successful, with consequent damage to the attractiveness of his programs. Material damage to each petitioner will accrue from the delay to which he must submit, under the auction selling system, in planning his schedule of programs and in booking and publicizing the programs, due to the uncer- [fol. 3750] tainty as to what pictures will be licensed to him under the auction selling plan and since the offering of a picture by a distributor, the making of bids, the scrutiny of the same, and the giving of notices of the result of each auction, must consume a substantial period of time;

(b) Inflict irreparable damage upon those petitioners which are in competition with exhibitors who operate larger theatres or exhibitors who have larger resources. An exhibitor with a larger theatre than the theatre of his competitor can afford to bid more for each of the outstandingly attractive features which may become available to the successful bidder for exhibition. Even without a larger theatre, a competitor with substantially greater resources can afford to make the highest bids for all the outstanding features and drive out of business the competitor with the smaller resources. Under the present system of licensing as alleged in Paragraphs 6 and 7 hereof, the smaller exhibitor has been able reasonably to compete with the larger one;

(c) Increase the prices of admission paid by the public. The auction selling system will materially increase the cost of operation of theatres because it will materially increase the amount of film rentals.

The auction selling system will materially increase the cost of the operation of theatres because of the material increases in buying expenses which will be imposed upon exhibitors by the adoption of the auction selling system. Since the film rent of an exhibitor is ordinarily his largest item of expense, it is essential that the amounts of his bids for pictures under the proposed decree should be limited to their approximate probable values. He must inform himself as

to the probable values to him of all the individual pictures among the entire body of approximately five hundred features, and several times as large a number of shorts, annually distributed, by all distributors. The information must be much more accurate than under the present system with its equitable adjustment practices; must cover all pictures rather than the smaller number which the exhibitor will have playing time to exhibit and which are distributed by the individual distributors from whom under the present system the exhibitor usually licenses pictures; and when an exhibitor operates more than one theatre, the proposed auction selling system will require the forming by him of a separate conclusion as to the probable value of each picture in each separate theatre. In order to secure for one theatre only, the fifty to three hundred features, and the one hundred and fifty to nine hundred shorts, annually required, the exhibitor must make many more bids since only a portion will be successful. The prohibition against bidding at one time for the privilege of exhibiting more than one picture or of exhibiting a picture in more than one theatre or of exhibiting in one theatre to be thereafter designated from a number operated upon the same run in one city or town, will greatly increase the number of required bids to be made by the exhibitor with more than one theatre. The auction system will greatly increase the time and labor required for buying and the necessary qualifications of buyers. The preparation and making of bids by exhibitors; the verifications by un- [fol. 3751] successful bidders of the correctness of the determinations by distributors of successful bidders; correspondence seeking clarifications of offerings and making requested clarifications of bids; the making, filing, indexing and maintenance of records of bidding: all of these will cause large increases in the present buying expenses of exhibitors. All of the increases of the costs of the exhibitors will inevitably be reflected in the long run by equivalent increases in the prices of admission paid by the public;

(d) Render the programs less attractive and amusing to the public by substantially interfering with their planning because, for the reasons set forth in Para-

graphs 6, 7 and 8 hereof, under the auction selling system, the exhibitors will not be able effectively to license and book appropriate pictures;

(e) Give rise to a large and an endless stream of controversy and litigation arising out of the questions of due notice of auctions, interpretation of provisions as to run and clearance, whether a particular theatre is of a size, location, and equipment to present a picture to advantage or "upon the terms agreed," "responsibility" of a bidder, interpretation of bids, discrimination among bidders, and the like.

Binding Effect of Judgment.

10. Substantial rights of petitioners are determined by the findings of fact and conclusions of law of the Court as set forth in the said opinion. No petitioner can conduct his business profitably without exhibiting pictures licensed by one or more defendants. The entry and enforcement of a decree, containing provisions based upon the directions of the Court set forth in Paragraph 1 hereof, would cause irreparable damage to them and all others similarly situated by the destruction of their goodwill and other property rights, and the disorganization of their business, all as herein set forth.

Adequacy of Representation.

11. Petitioners have caused to be examined the original and the amended and supplemental complaint filed herein, the briefs filed herein, and the oral arguments of counsel. The directions hereinabove set forth in Paragraph 1 hereof were not prayed for in the original or the amended and supplemental complaint, and neither in the said briefs nor in the oral argument of counsel were said directions sought on behalf of any party. The question of whether or not such directions should be made was not in issue at any time between the parties. On the contrary the defendants or some of them opposed such directions, and plaintiff's position as stated by its counsel was that such directions were unnecessary and inadvisable. The Court has not been adequately informed either by evidence or argument as to the effect of said directions upon petitioners or the public or as to the practicability of the same or their efficacy to achieve the desired results.

Petitioners have never been represented adequately or otherwise or permitted to be heard in respect to said directions as set forth in the opinion.

[fol. 3752] Timeliness of Petition.

12. The aforesaid opinion containing the directions set forth in Paragraph 1 hereof was rendered without notice to petitioners, or any of them, and without any opportunity being afforded them to be heard in opposition thereto. The directions relating to auction selling came as a complete surprise to petitioners. Following the rendering of the opinion, time was required for its dissemination by the trade papers and by other means among the exhibitors. The exhibitors not being parties to the suit, were not fully conversant therewith, and required further time to study, digest and analyze the effects on their business of the many provisions of the opinion. As they gradually became or were made aware of the harmful effects of the proposed auction selling plan, additional time was required for the crystallization of that opinion, and, because the exhibitors and the associations are widely spread, in organizing to present their objections to auction selling. Upon the completion of the necessary organization, counsel was expeditiously sought, and under the advice of counsel the relevant facts were assembled, all to the end of presenting to this Court at as early a date as possible (so as not unduly to delay the final determination of this matter or to prejudice the rights of the parties or the public) the facts as set forth herein and the legal conclusions arising therefrom, and seeking the relief herein prayed. As a result of this petition being approved and supported by the associations designated in Paragraph 2 and the extreme variation in the characteristics of individual petitioners, as alleged in Paragraph 3, it is believed that there will be presented to the Court by exhibitors only one or two petitions for intervention other than this one.

It is further believed that as the statements in this petition cannot be successfully contraverted, the relief herein sought may be granted without taking further evidence.

Prayers for Relief.

Wherefore, petitioners respectfully pray as follows:

1. That an order be made permitting petitioners to intervene as parties defendant herein for the purposes set forth in this petition;

2. That the opinion of the Court, dated June 11, 1946, be modified so as to exclude therefrom the directions set forth in Paragraph 1 of this petition;

3. That petitioners have such other and further relief in the premises as the Court may deem just and proper.

John G. Jackson, Attorney for Petitioners. Jackson, Nash, Brophy, Barringer & Brooks, 15 Broad Street, New York, N. Y.; Christian, Barton, Parker & Boyd, 909 East Main Street, Richmond, Virginia.

[fol. 3753] In the District Court of the United States

[Title omitted]

Plaintiff's Proposed Judgment—October 8, 1946

The Court having rendered its opinion herein on June 11, 1946, having duly considered the proposals of [fol. 3754] the parties as to its findings and judgment and having filed its findings of fact and conclusions of law in accordance with said opinion wherein certain of the defendants herein were found to have violated Sections 1 and 2 of the act of Congress, approved July 2, 1890, 26 Stat. 209, commonly known as the Sherman Act,

It is hereby ordered, adjudged and decreed as follows:

I

1. The complaint is dismissed as to the defendant Screen Gems, Inc. and the corporation named in the complaint as Universal Pictures Company, Inc., merged during the pendency of this case into the defendant Universal Corporation. The complaint is also dismissed as to the claims made against the remaining defendants herein based upon their acts as producers, whether as individuals or in conjunction with others.

Each of the defendants,[1] Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's Incorporated; Radio-Keith-Orpheum Corporation; RKO Radio Pictures, Inc.; Warner Bros. Pictures, Inc.; Warner Bros. Pictures Distributing Corporation (formerly known as Vitagraph, Inc.); Twentieth Century-Fox Film Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Pictures Company, Inc. (formerly known as Universal Corporation); Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation are hereby enjoined:

[fol. 3755] II

1. From granting any license in which minimum prices for admission to a theatre are fixed by the parties, either in writing or through a committee, or through arbitration, or upon the happening of any event, or in any other wise.

2. From agreeing with each other or with any exhibitors or distributors to maintain a system of clearances.[2]

3. From granting any clearance between theatres not in substantial competition.

4. From granting any clearance against theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted.

5. From enforcing any existing agreement which grants clearance to any theatre not its own in which a defendant owns a direct or indirect financial interest of more than 5%.

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[1] Wherever a defendant is enjoined herein, the injunction shall also apply to its successors such individuals as act on its behalf with respect to the matters enjoined, and to corporations in which it owns a direct or indirect stock interest of 50% or more.

[2] The term "clearance" as used herein means the period of time, usually stipulated in license contracts, which must elapse between runs of the same picture within a particular area or in specified theatres.

6. From further performing any existing franchise [3] to which it is a party and from making any franchises in the future.

[fol. 3756] 7. From further performing any existing formula deal [4] or master agreement [5] to which it is a party, except such agreements as may have been made after the defendant had offered the films licensed to theatres operated in competition with those covered by the agreement in a manner which permitted such theatres to compete on a theatre by theatre basis with the theatres covered by these agreements for the privilege of exhibiting such films, and from making any similar agreements in the future.

8. From performing or entering into any license in which the license to exhibit one feature [6] is conditioned upon the licensee's taking one or more other features. Licenses to exhibit more than one feature may be included in a single instrument provided the licensee shall have had the opportunity to bid for each feature separately and shall have made the best bid for each picture so included. To the extent that any of the pictures have not been trade shown prior to the granting of the license for more than a single picture, the licensee shall be given,

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[3] The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.

[4] The term "formula deal" as used herein means a licensing agreement with a circuit of theatres in which the rental price of a given film is measured for the circuit as a whole by a specified percentage of the picture's national gross.

[5] The term "master agreement" as used herein means a licensing agreement, also known as a "blanket deal," covering the exhibition of films in a number of theatres, usually comprising a circuit.

[6] The term "feature" as used herein means any motion picture, regardless of topic, the length of the film of which is in excess of 4000 feet.

by the licensor, the right to reject 25% of such pictures not trade shown prior to the granting of the license, such right of rejection to be exercised in the order of release [fol. 3757] within 10 days after there has been an opportunity afforded to the licensee to inspect it.

9. From licensing any film more than six months in advance of its release.

10. From offering films for license in the future for exhibition in any theatre not its own [7] in any manner except the following:

(a) A license to exhibit each film released for public exhibition shall be offered upon reasonable terms for some run [8] to the operator of each theatre which desires to exhibit it;

(b) Where a run is desired upon terms which exclude simultaneous exhibition in competing theatres, it shall be offered to the competing exhibitors involved having a theater adequate to show the picture upon such a run and granted to the highest responsible bidder, provided that such exclusive run does not unreasonably restrict competition in the area covered.

(c) Each license shall be granted solely upon the merits and without discrimination in favor of affiliates, old customers, or any ~~person whatsoever~~;

[fol. 3758] (d) Each license shall be offered and taken theatre by theatre and picture by picture; and

(e) Each license shall specify a date of availability of a print for the run licensed and provide that such run shall commence within 30 days after such availability.

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[7] A theatre is not a defendant's own theatre for the purpose of this decree unless it owns therein a legal or equitable interest of 95% or more, either directly or through subsidiaries.

[8] The term "run" as used herein means one of a succession of exhibitions of a motion picture in a given area, first run being the first exhibition in the area, second run being the next subsequent, etc. Where successive exhibitions occur in different theatres, they shall be regarded as separate runs for the purpose of this decree, even though such theatres may be under common ownership or management.

11. From combining, conspiring, or agreeing with each other or with any exhibitors or distributors to eliminate competition among themselves or with others in any manner whatsoever.

III

The defendants Paramount Pictures, Inc.; Loew's Incorporated; Radio-Keith-Orpheum Corporation; Keith-Albee-Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros. Pictures, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; and National Theatres, Inc. are hereby enjoined and restrained:

1. From performing or enforcing agreements referred to in paragraphs 5, 6, and 7 of the foregoing Section II hereof to which it may be a party.

2. From making or continuing to perform pooling agreements whereby given theatres of two or more exhibitors normally in competition are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors or whereby profits of the "pooled" theatres are divided among the owners according to prearranged percentages.

[fol. 3759] 3. From making or continuing to perform agreements that the parties may not acquire other theatres in a competitive area where a pool operates without first offering them for inclusion in the pool.

4. From making or continuing leases of theatres under which it leases any of its theatres to another defendant or to an independent operating a theatre in the same competitive area in return for a share of the profits.

5. From continuing to own or acquiring any beneficial interest in any theatre, whether in fee or in shares of stock or otherwise, in conjunction with another defendant and from continuing to own or acquiring such an interest in conjunction with an independent [9] where such interest shall be

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[9] As here used the term "independent" means any former, present, or potential motion picture theatre operator which is not owned or controlled by the defendant holding the interest in question.

greater than 5%, unless such interest shall be 95% or more. The existing relationships which violate this provision shall be terminated within two years The relationships between the defendants and independents which violate this provision shall be dissolved by a sale of the defendants' interest to operators not owned or controlled by any of the defendants herein. In dissolving relationships among defendants which violate this provision, one defendant may acquire the interest of another, if the Court shall first find that such acquisition will promote competition in the exhibition of motion pictures. Each of the defendants shall submit to this Court within 90 days a statement outlining the extent to which it has complied and the manner in which it proposes to comply with this provision, setting forth in detail the names, locations, and general descriptions of the theatres, corporate securities, and beneficial interests of any kind involved, the sales thereof that it has made, and such interests as it proposes to acquire, with a statement of facts regarding each competitive situation involved in such proposed acquisition sufficient to show the probable effect of such acquisition on that situation. Similar reports shall be made quarterly thereafter until this provision shall have been fully complied with. Reasonable notice of such acquisition plans shall be served upon the Attorney General and plaintiff shall be given an opportunity to be heard with respect thereto before any such acquisition shall be approved by the Court.

6. From expanding its present theatre holdings in any manner whatsoever.

7. From operating, booking, or buying films for any of its theatres through any agent who is also acting in such manner for any other exhibitor, independent or affiliated.

8. From licensing for exhibition in any theatre owned or controlled by it films distributed or produced by another defendant named in this section which is not affiliated with it, for a period commencing one year after the entry of this decree and continuing for a period of not less than ten years. At the conclusion of said period, any party may move to modify this provision in any manner which the facts then appearing to the Court may warrant.

IV

The provisions of the existing consent decree are hereby declared to be of no further force or effect, except insofar as may be necessary to conclude arbitration proceedings [fol. 3761] now pending and to liquidate in an orderly manner the financial obligations of the defendants and the American Arbitration Association, incurred in the establishment of the consent decree arbitration systems. Existing awards and those made pursuant to pending proceedings shall continue to be enforceable to the extent that they may be consistent with the provisions of this decree.

V

For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of antitrust matters, and on notice to any defendant, reasonable as to time and subject matter, made to such defendant at its principal office and subject to any legally recognized privilege, (1) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, or correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this decree, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interview counsel for the officer or employee interviewed and counsel for the company may be present.

Information obtained pursuant to the provisions of this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, [fol. 3762] except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

VI

Paragraphs 8, 9, and 10 of Section II of this decree shall not become effective until January 1, 1947.

VII

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to the decree to apply to the Court at any time for such orders or direction as may be necessary or appropriate for the construction or carrying out of the same, for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.

VIII

Plaintiff shall recover, jointly and severally, from the defendants enjoined herein, its costs.

Entered this — day of ——, 1946.

—— ——, Circuit Judge; —— ——, District Judge; —— ——, District Judge.

[fol. 3763] In the District Court of the United States

[Title Omitted]

Plaintiff's Proposed Judgment—June 19, 1946

The Court having rendered its opinion herein on June 11, 1946, and having filed its findings of fact and conclusions of law in accordance with said opinion wherein certain of the defendants herein were found to have violated Sections 1 and 2 of the Sherman Act,

It is hereby Ordered, Adjudged and Decreed as follows:

[fol. 3764]

I

1. The complaint is dismissed as to the defendants Screen Gems, Inc. and Universal Pictures Company, Inc. The complaint is also dismissed as to the claims made against the remaining defendants herein based upon their acts as producers, whether as individuals or in conjunction with others.

II

Each of the defendants,[1] Paramount Pictures, Inc.; Para-

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[1] Wherever a defendant is enjoined herein the injunction shall also apply to its corporate successors, such individuals as undertake to act on its behalf with respect to the matters enjoined, and to corporations in which it owns a stock interest of 50% or more.

mount Film Distributing Corporation; Loew's, Incorporated; Radio-Keith-Orpheum Corporation; RKO Radio Pictures, Inc.; Warner Bros. Pictures, Inc.; Vitagraph, Inc.; Twentieth Century-Fox Film Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation are hereby enjoined:

1. From granting any license in which minimum prices for admission to a theatre are fixed by the parties, either in writing or through a committee, or through arbitration, or upon the happening of any event, or in any other wise.

2. From concertedly agreeing to maintain a system of clearances [2] among these defendants, their exhibition affiliates, or with other exhibitors.

3. From granting any clearance between theatres not in substantial competition.

[fol. 3765] 4. From granting any clearance against theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted or enforcing any existing clearance to the extent of such excess. In determining what is a reasonable clearance the following factors should be taken into consideration:

(a) The admission prices of the theatres involved, as set by the exhibitor;

(b) The character and location of the theatres involved, including size, type of entertainment, appointments, transit facilities, etc.;

(c) The policy of operation of the theatres involved, such as the showing of double features, gift nights, give-aways, premiums, cutrate tickets, lotteries, etc.;

(d) The rental terms and license fees paid by the theatres involved and the revenues derived by the distributor-defendant from such theatres;

[2] The term "clearance" as used herein means the period of time, usually stipulated in license contracts, which must elapse between runs of the same picture within a particular area or in specified theatres.

(e) The extent to which the theatres involved compete with each other for patronage; and

(f) The fact that a theatre involved is affiliated with a defendant-distributor or with an independent [3] circuit of theatres should be disregarded.

5. From further performing any existing franchise [4] to which it is a party and from making any franchises in the future.

[fol. 3766] 6. From further performing any existing formula deal [5] or master agreement [6] to which it is a party, except such agreements as may have been made after the defendant had offered the films licensed to theatres operated in competition with those covered by the agreement in a manner which permitted such theatres to compete on a theatre by theatre basis with the theatres covered by these agreements for the privilege of exhibiting such films and from making any similar agreements in the future.

7. From performing or entering into any license in which the license to exhibit one feature [7] is conditioned upon the

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[3] The term "independent" as used in this provision means a producer, distributor, or exhibitor, as the context requires, which is not a defendant in this action or a subsidiary or affiliate of a defendant.

[4] The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.

[5] The term "formula deal" as used herein means a licensing agreement with a circuit of theatres in which the rental price of a given film is measured for the circuit as a whole by a specified percentage of the picture's national gross.

[6] The term "master agreement" as used herein means a licensing agreement, also known as a "blanket deal," covering the exhibition of films in a number of theatres, usually comprising a circuit.

[7] The term "feature" as used herein means any motion picture, regardless of topic, the length of the film of which is in excess of 4,000 feet.

licensee's taking one or more other features. Licenses to exhibit more than one feature may be included in a single instrument provided the licensee shall have had the opportunity to bid for each feature separately and shall have made the best bid for each picture so included. To the extent that any of the pictures have not been trade shown prior to the granting of the license for more than a single picture, the licensee shall be given, by the licensor, the right to reject % of such pictures not trade shown prior to the granting of the license, such right of rejection to be exercised within 10 days after there has been an opportunity afforded to the licensee to inspect it.

[fol. 3767] 8. From offering films for license in the future for exhibition in any theatre not its own,[8] in any manner except the following:

(a) A license to exhibit each film released for public exhibition shall be first offered at a minimum price for any run[9] desired by the operators of each theatre within the competitive area where the offer is made;

(b) The license desired shall in such case be granted to the highest responsible bidder having a theatre [of size and equipment] adequate to show the picture upon the terms offered;

(c) The license shall be granted solely upon the merits and without discrimination in favor of affiliates, old customers, or any person whatever; and

(d) Each license shall be offered and taken theatre by theatre and picture by picture.

III.

The defendants Paramount Pictures, Inc.; Loew's, Incorporated; Radio-Keith-Orpheum Corporation; Keith-

[8] A theatre is not a defendant's own theatre for the purposes of this decree unless it owns therein a legal or equitable interest of 95% or more, either directly or through subsidiaries.

[9] The term "run" as used herein means one of a succession of exhibitions of a motion picture in a given area, first run being the first exhibition in the area, second run being the next subsequent, etc.

Albee-Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros. Pictures, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; and National Theatres, Inc. are hereby enjoined and restrained:

1. From continuing to perform any agreements referred to in paragraphs 5 or 6 of the foregoing Section II hereof to which it may be a party.

[fol. 3768] 2. From making or continuing to perform pooling agreements whereby given theatres of two or more exhibitors normally in competition are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors or whereby profits of the "pooled" theatres are divided among the owners according to prearranged percentages.

3. From making or continuing to perform agreements that the parties may not acquire other theatres in a competitive area where a pool operates without first offering them for inclusion in the pool.

4. From making or continuing leases of theatres under which it leases any of its theatres to another defendant or to an independent operating a theatre in the same competitive area in return for a share of the profits.

5. From continuing to own or acquiring any beneficial interest in any theatre, whether in fee or in shares of stock or otherwise, in conjunction with another defendant exhibitor and from continuing to own or acquiring such an interest in conjunction with an independent [10] where such interest shall be greater than 5%, unless such interest shall be 95% or more. The existing relationships which violate this provision shall be terminated within . The relationships between the defendants and independents which violate this provision shall be dissolved by a sale to or a purchase from the co-owner or co-owners. No such interest of a co-owner may be purchased by a defendant unless this Court shall first find that such purchase will promote competition in the exhibition of motion pictures. Each of the defendants shall submit to this Court within days a

[10] As here used the term "independent" means any person not a party to this suit.

statement outlining the extent to which it has complied and the manner in which it proposes to comply with this pro- [fol. 3769] vision, setting forth in detail the names, locations, and general descriptions of the theatres, corporate securities, and beneficial interests of any kind involved, the sales thereof that it has made, and such purchases as it proposes to make, with a statement of facts regarding each competitive situation involved in such proposed purchases sufficient to show the probable effect of such purchase on that situation. Similar reports shall be made quarterly thereafter until this provision shall have been fully complied with. Reasonable notice of such purchase plans shall be served upon the Attorney General and plaintiff shall be given an opportunity to be heard with respect thereto before any such purchases shall be approved by the Court.

6. From expanding its theatre holdings, except in the course of acquiring a co-owner's interest in jointly owned theatres pursuant to the provisions of Section III(5) above. Other theatre interests necessary to protect a defendant's investment or in order to enter a competitive field may be acquired providing that no expansion of its theatre holdings shall result therefrom. In the latter case such acquisitions shall not occur until after approval of this Court is obtained therefor. Reasonable notice of such an application shall be served upon the Attorney General and the plaintiff shall be given an opportunity to be heard with respect to such approval before it shall be granted.

7. From operating, booking, or buying films for any of its theatres through any agent who is also acting in such manner for any other exhibitor, independent, or affiliated.

IV

Provision shall be made for the arbitration of claimed violations of Section II of this decree, as to bids, clearances, runs, and any other subjects appropriate for arbitration in respect to all parties who may consent to the creation of such tribunals as may be hereunder created for adjustment [fol. 3770] of such disputes. The awards thereof shall be reviewable by an appeal board generally similar to the one created by the existing consent decree as to any parties consenting thereto. Within days the defendants shall submit to the Court their proposals as to the creation and operation of such arbitration and appeal board machinery as

they are willing to consent to for the purpose of implementing this section of the decree. Copies thereof shall be served on the Attorney General and the plaintiff shall have a reasonable time after receipt thereof to advise the Court as to any objections it may have to such systems as the defendants may propose. The provisions of the existing consent decree are hereby declared to be of no further force or effect, except as to arbitration proceedings now pending. They shall remain in effect as to such proceedings until final disposition shall have been made thereof. Existing awards and those made pursuant to pending proceedings shall continue to be enforceable to the extent that they are consistent with the provisions of this decree.

V

For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of antitrust matters, and on notice to any consenting defendant, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege, (1) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this decree, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interview [fol. 3771] counsel for the officer or employee interviewed and counsel for the company may be present.

Information obtained pursuant to the provisions of this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

VI

Paragraphs of this decree shall not become effective until

VII

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to the decree to apply to the Court at any time for such orders or directions as may be necessary or appropriate for the construction or carrying out of the same, for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.

VIII

Plaintiff shall recover, jointly and severally, from the defendants enjoined herein, its costs.

Entered this — day of ——, 1946.

——, Circuit Judge; ——, District Judge; ——, District Judge.

[fol. 3772] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PROPOSED DECREE OF DEFENDANTS PARAMOUNT, LOEW, FOX, WARNER AND RKO—Filed October 7, 1946

The Court having rendered its opinion herein on June 11, 1946, and having filed its findings of fact and conclusions of law in accordance with said opinion wherein certain of the defendants herein were found to have violated, in the respects therein specified, the act of Congress, approved July 2, 1890, 26 Stat. 209, commonly known as the Sherman Act,

It is hereby ordered, adjudged and decreed as follows:

[fol. 3773]

I

The petition and the amended and supplemental complaint are dismissed as to the defendants Screen Gems, Inc. and Universal Pictures Company, Inc. They are also dismissed as against the remaining defendants herein as to all claims based upon their acts as producers, whether as individuals or in conjunction with others, or based upon any alleged violations of the Sherman Act with respect to production, including all claims based upon alleged acts of discrimination against producers.

II

Each of the defendants,[1] Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's Incorporated; Radio-Keith-Orpheum Corporation; RKO Radio Pictures, Inc.; Warner Bros. Pictures, Inc.; Warner Bros. Pictures Distributing Corporation, (formerly known as Vitagraph, Inc.); Twentieth Century-Fox Film Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation, when acting as a distributor of features,[2] is hereby enjoined:

1. From granting any license in which a minimum admission price or prices to be charged at any theatre during [fol. 3774] the exhibition of the feature licensed is or are agreed upon between the licensor and the licensee in any manner or by any means, provided that nothing in this Decree shall limit or affect the right of a distributor defendant to require that any offer by an exhibitor[3] to license any of its features shall include a statement by the exhibitor of the admission price or prices, fixed by the exhibitor, which the exhibitor intends to charge for admission to the exhibitor's theatre during the exhibition of the feature.

2. From concertedly agreeing with each other to maintain a system of clearances.[4]

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[1] Whenever a defendant is enjoined herein the injunction shall be binding upon its officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

[2] The term "feature" as used in this Decree means any motion picture, regardless of topic, the length of the film of which is in excess of 4,000 feet.

[3] The term "exhibitor" as used in this Decree means a person, firm or corporation which is engaged in the business of operating a theatre or theatres exhibiting feature motion pictures for profit for its own account.

[4] The term "clearance" as used in this Decree means the period of time, agreed upon between the distributor and its licensee and usually stipulated in a license agreement, prior to the expiration of which a feature licensed for prior exhibition in a theatre may not be exhibited in another theatre or theatres.

3. From granting any clearance in excess of what is reasonably necessary to protect the licensee in the run granted, or the licensor's revenue from the exhibition of the feature licensed, and from enforcing any existing clearance to the extent of such excess. In determining what is a reasonable clearance, the following factors, among others, should be taken into consideration:

(a) The admission prices of the theatres involved, as set by the exhibitors;

(b) The character and location of the theatres involved, including size, type of entertainment, appointments, transit facilities, etc.;

(c) The policy of operation of the theatres involved, such as the showing of double features, gift nights, give-aways, premiums, cutrate tickets, lotteries, etc.

(d) The rental terms and license fees paid by the theatres involved and the revenues derived by the distributor defendant from such theatres;

[fol. 3775] (e) The extent to which the theatres involved compete with each other for patronage;

(f) The fact that a defendant or an independent circuit of theatres has an interest in one or more of the theatres involved should be disregarded; and

(g) There should be no clearance between theatres not in substantial competition.

4. From further performing any existing franchise [5] to which it is a party and from making any franchise in the future.

5. From further performing any existing formula deal [6]

[5] The term "franchise" as used in this Decree means a licensing agreement or a series of licensing agreements, entered into as part of the same transaction, in effect for more than one motion picture season and covering the exhibition of features released by a distributor during the entire period of the agreement.

[6] The term "formula deal" as used in this Decree means a licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross.

or master agreement[7] to which it is a party, and from making any formula deal or master agreement in the future.

6. From performing and from entering into any license in which the right to exhibit one feature is conditioned upon the licensing by the exhibitor of one or more other features.

7. From licensing a feature in any case where two or more exhibitors operating competing theatres have notified a distributor that they desire to license such feature on a [fol. 3776] run designated by the distributor defendant in any manner except the following:

(a) The distributor defendant shall offer such feature to each such exhibitor who has a theatre of the size, location and equipment suitable and adequate to show the feature to advantage upon such run. The offer may include minimum terms[8] upon which the distributor defendant will grant a license for such run. The license shall be granted to the exhibitor whose offer for the feature satisfies the minimum terms, if any, and in the judgment of the distributor defendant exercised in good faith affords the best terms. Each such license shall be granted solely upon the merits and without discrimination as between exhibitors competing for the run, whether in favor of theatres in which any other defendant has an interest, old customers, or any person whatsoever.

(b) In determining which exhibitor's offer affords the best terms the following factors, among others, should be taken into consideration and accorded the importance and weight to which each is entitled regardless of the order in which they are listed:

(1) The film revenue which the distributor defendant will derive from each theatre for the exhibition of such fea-

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[7] The term "master agreement" as used in this Decree means an agreement licensing the exhibition of a feature in two or more theatres in a particular circuit in which there are not separate provisions covering the licensing of the feature for exhibition in each particular theatre.

[8] The minimum terms may include, among other things, the minimum license fee; the exhibition period; the time when the exhibition is to commence; and the availability and clearance, if any, which will be granted for each such run.

ture on the run in question and upon the terms offered by the exhibitor. In estimating such film revenue, the distributor defendant should take into consideration, among other things:

The number of days for which and the particular days of the week or year or other playing arrangements upon which each exhibitor plans to play the feature; the character, location and size of each theatre; the type of entertainment which each exhibitor intends to present with the feature involved and which the exhibitor in the past has customarily offered the public; the appointments and equipment of each theatre; transit facilities; the admission prices of each theatre as set by each exhibitor for the period of the exhibition of the feature; the distributor defendant's actual experience with each of the exhibitors in fulfilling its obligations in past contracts; each exhibitor's reputation generally in the industry and in the community for honesty, fair dealing and showmanship; and the financial responsibility of the exhibitor operating each of the theatres involved.

[fol. 3777] (2) The comparative suitability of the theatres for the advantageous exhibition of the distributor defendant's feature on the run in question; and

(3) The effect which the exhibition of the feature in each of the theatres would have upon other exhibitions of the feature.

(c) Each license shall be offered and taken theatre by theatre and feature by feature.

(d) The distributor defendant may reject any and all offers which are the product of collusion among exhibitors.

(e) Each distributor defendant shall adopt and publicly announce reasonable rules and regulations applicable to the licensing of features pursuant to this subdivision 7 which may, from time to time, be amended by such distributor defendant. These may include a designation of areas within which it intends to offer each feature for license and the type, number and sequence of run to be offered therein, and the number, if any, of simultaneous exhibitions it will offer on any such run. Each distributor defendant shall file a copy of such rules, regulations and amendments, if any,

with the Clerk of the Court and with the Department of Justice.

(f) The provisions of this subdivision 7 of this Section II shall become effective not later than — months after the date of this Decree.

8. A license to exhibit one or more features in one or more theatres may be included in a single instrument provided that the license has been negotiated and entered into in a manner not inconsistent with the provisions of this Section II. To the extent that any of the features have not been trade shown[9] prior to the granting of the license for more than a single feature, the licensee shall be given, by the licensor, the right to reject —% of such features not trade shown prior to the granting of the license, but, such right to reject any such feature must be exercised by the exhibitor by notice in writing within ten days after there has been an opportunity afforded to the exhibitor to inspect it within the distributor's exchange district in which the exhibition is to be held.

[fol. 3778] 9. The provisions of subdivisions (3), (6) and (7) of Section II hereof may be enforced in arbitration against any consenting defendant,[10] as follows:

(A) Clearance

Controversies arising upon the complaint of an exhibitor that a distributor defendant has not complied with the provisions of subdivision 3 of this Section II shall be subject to arbitration in the manner provided in the Rules of Arbitra-

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[9] A distributor's feature shall be deemed to have been trade shown where it is exhibited at a theatre or projection room for the benefit of exhibitors generally within such distributor's exchange district in which the public exhibition is to be held.

[10] The term "consenting defendant" as used herein means each of the following named defendants: Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's Incorporated; RKO Radio Pictures, Inc.; Warner Bros. Pictures Distributing Corporation; Twentieth Century-Fox Film Corporation and each other defendant which hereafter files with the Court its written consent to be bound by the provisions hereof relating to arbitration.

tion which are annexed hereto and made a part hereof, and the power of the arbitrator in each of such controversies shall be limited to the making of an award fixing the maximum clearance between the theatre involved which may be granted in licenses thereafter entered into by the distributor defendant which is a party to the arbitration or, where the arbitrator finds that the theatres involved are not in substantial competition, prohibiting the granting of clearance between the theatres in licenses thereafter entered into.

Any distributor defendant or any exhibitor affected by any such award may institute a further arbitration proceeding for a modification thereof upon the ground that since the making of the award the conditions with respect to the theatres involved therein have so changed as to warrant modification, and, in the event that the arbitrator finds that there has been such change, he shall make a redetermination of the clearance and may make an award fixing the maximum clearance, if any, which may thereafter be granted in licenses thereafter entered into by the distributor defendant which is a party to the arbitration.

[fol. 3779] When, in any arbitration under this subdivision, the finding of the arbitrator shall be that the complainant has not sustained his complaint, the arbitrator shall enter an award dismissing the complaint.

(B) Conditioning

Controversies arising upon the complaint of an exhibitor that a distributor defendant has not complied with the provisions of subdivision 6 of this Section II in licensing or offering to license a feature to such exhibitor shall be subject to arbitration in the manner provided in the Rules of Arbitration.

Where a license has been entered into, an exhibitor shall have no right to assert any such claim unless he shall have mailed to the distributor defendant at its home office a notice in writing of such claim and of the grounds therefor not later than two days after receipt by the exhibitor of the distributor defendant's written approval of the exhibitor's signed application or applications.

The power of the arbitrator in deciding any such controversy shall be limited to making (1) a finding as to whether or not the licensing of a feature was in compliance

with such provisions, and if the finding be in the negative, (2) an award cancelling the license for (or to the extent that it may relate to) such other feature or features and (3) in the discretion of the arbitrator, an award of an amount not exceeding $500 to be paid to the complainant.

Where no license has been entered into an exhibitor shall have no right to assert any such claim unless he shall have mailed to the distributor defendant at its home office a [fol. 3780] notice in writing of such claim and of the grounds therefor not later than five (5) days after the exhibitor claims the alleged offer was made.

The power of the arbitrator in deciding any such controversy shall be limited to making (1) a finding as to whether or not the offer to license such feature was made in compliance with such provisions, and, if the finding be in the negative, (2) in the discretion of the arbitrator, an award of an amount not exceeding $250 to be paid to the complainant.

In any arbitration under this heading (B) if the Arbitrator finds in favor of the distributor defendant, he shall enter an award dismissing the complaint.

(C) Licensing

Controversies arising upon the complaint of an exhibitor that a distributor defendant has not complied with the provisions of subdivision 7 of this Section II shall be subject to arbitration in the manner provided in the Rules of Arbitration.

If the Arbitrator finds in favor of the distributor defendant, he shall enter an award dismissing the complaint. If the Arbitrator finds in favor of the complainant, he shall make an award specifying the respects in which the distributor defendant has failed to comply with the provisions of said subdivision 7 of Section II, and may also award to the complainant its actual compensatory damages in an amount of not less than $100. nor more than $5,000. No such award, however, shall affect any license agreement theretofore entered into or the exhibition of any feature thereunder.

An exhibitor shall have no right to assert such claim unless the arbitration shall be commenced within 30 days after the exhibitor shall have had notice of the facts constituting the claimed non compliance with subdivision 7 of Section II hereof.

[fol. 3781] III

Each of the defendants Paramount Pictures, Inc.; Loew's Incorporated; Radio-Keith-Orpheum Corporation; Keith-Albee-Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros. Pictures, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; and National Theatres Corporation when acting as an exhibitor is hereby enjoined and restrained:

1. From entering into and from continuing to perform any agreements with a distributor defendant, of the type prohibited in subdivisions 4 and 5 of the foregoing Section II hereof.

2. From entering into and from continuing to perform any agreement for the pooling of theatres whereby

(a) a given theatre of a defendant and a given theatre of an exhibitor, normally in competition with the defendant's theatre, are operated as a unit, or whereby the business policies for such theatres are collectively determined by a joint committee or by one of the exhibitors, and whereby the profits of such pooled theatres are divided among such defendant and such exhibitor according to pre-agreed percentages or otherwise; or

(b) the parties thereto may not acquire other theatres in the competitive area where the pool operates without first offering such other theatres for inclusion in the pool; or

(c) such defendant leases any of its theatres to another defendant or to another exhibitor operating one or more theatres in the same competitive area in return for a share of the profits of any two or more of the allied theatres.

Existing agreements which violate the provisions of this section shall be terminated within 2 years after the date of this Decree.

[fol. 3782] 3. From continuing to own, in conjunction with another exhibitor-defendant, any proprietary interest in any theatre or in a firm or corporation owning, leasing or operating any theatre and from leasing a theatre to another exhibitor defendant upon a rental based upon a percentage of the profits of the leased theatre. Existing relationships which are inconsistent with this provision shall be termi-

nated within two years from the date of this Decree by a sale to or purchase from the co-owner or co-owners or by a division of the assets so jointly held or by a sale of the joint interest of one of such exhibitor-defendants to a party not a defendant herein or by the termination or revision of any lease inconsistent with the provisions of this Sub-division 3 of this Section III.

4. (a) From continuing to own in conjunction with any independent exhibitor[11] a proprietary interest in any theatre or in any firm or corporation owning, leasing or operating any theatre unless such interest is 5% or less or 95% or more, and provided, further, that any defendant owning an interest of more than 5% but less than 95% in any theatre may apply to this Court for permission to retain the same in accordance with the provisions of subdivision 4(d) hereof.

(b) The existing relationships between an exhibitor defendant and an independent exhibitor which are inconsistent with the provisions of 4 (a) above shall in each case be dissolved or otherwise dealt with within —— years after the date of this Decree, by ——.

[fol. 3783] (1) A sale or other disposition of the exhibitor defendant's interest; or

(2) A purchase by such exhibitor defendant of the outstanding interest; or

(3) A division of some or all of the assets between the parties to such relationship.

Purchases or divisions of assets pursuant to (2) and (3) above shall be subject to the approval of the Court upon application by the exhibitor defendant.

(c) The provisions of subdivision 4(a) shall not apply, nor shall the dissolution of any joint relationship between

[11] The term "independent exhibitor" as used in this decree means an exhibitor (which is not a defendant in this action, or a subsidiary of a defendant, or is not controlled by a defendant) or a person, firm or corporation which, but for such joint proprietary interest, would be operating one or more of such jointly owned theatres for its own account in competition with the defendant.

an exhibitor-defendant and an independent exhibitor be required, in any case where such joint relationship resulted from the sale, transfer or other disposition by the exhibitor-defendant of the partial interest to such independent exhibitor, except to the extent, if any, to which and in the places in which the parties were in competition at the time of such sale, transfer or other disposition by the exhibitor-defendant to the independent exhibitor.

(d) In any application by any defendant pursuant to subdivisions 4 (a) and 4 (b) of this section III, if the Court, after hearing, shall find that the transaction sought to be achieved will not result in an unreasonable restraint of competition in exhibition within the particular competitive area in which the theatres are situated, it shall approve the application.

5. From expanding its theater holdings except in the course of acquiring the interests of co-owners in jointly owned theaters pursuant to the provisions of subdivisions 3 and 4 above; provided, however, that nothing herein con- [fol. 3784] tained shall prevent an exhibitor-defendant from acquiring theaters or interests therein in order to protect its investments or in order to enter a competitive field; if, in the latter case, this Court or the District Court of the United States for the district in which the theater or theaters are located, shall approve the acquisition after due application is made therefor.

6. Reasonable notice of any application pursuant to the provisions of sub-divisions 4 and 5 of this Section III shall be served upon the Department of Justice and the plaintiff shall be given an opportunity to be heard with respect thereto.

IV

Each exhibitor defendant is hereby enjoined from booking or buying films for any of the theatres which it operates, or from operating any theatre, through any agent known by it to be acting in such capacity with respect to any theatre in which it is not permitted to retain or acquire a proprietary interest, or from acting as a booking or buying agent with respect to any such theatre or any theatre which is not operated by it or by a corporation in which it is permitted to retain or acquire a proprietary interest.

V

Nothing contained in this Decree shall be deemed to limit the right of any defendant to lease or otherwise contract for the temporary use of a theatre for the road showing[12] by it of a particular feature distributed by it or a corporation controlled by it upon such terms and conditions as may be negotiated by such defendant.

[fol. 3785]

VI

Nothing contained in this Decree shall apply to operations or activities of any defendant outside of the Continental United States[13] or to operations or activities of any defendant within the Continental United States in so far as they relate to the distribution or exhibition of motion pictures outside of the Continental United States.

VII

Nothing contained in this Decree shall be construed to limit, in any way whatsoever, the right of each distributor-defendant to license, or in any way to arrange or provide for, the exhibition of any or all the motion pictures which it may at any time distribute, in such manner, and upon such terms, and subject to such conditions as may be satisfactory to it, in any of its own theatres.[14]

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[12] A road show shall be deemed to be the exhibition prior to its general release of a feature which, because of its character or unusual cost, cannot, in the judgment of the distributor defendant, exercised in good faith, be distributed as advantageously by the distributor's normal method of distribution and which is exhibited by such defendant at advanced admission prices.

[13] The term "Continental United States," as used herein, means the territory within the boundaries of the forty-eight (48) States and the District of Columbia.

[14] A theatre is a defendant's own theatre for the purpose of this Decree if such defendant has therein a proprietary interest of 95% or more, either directly or through subsidiaries, or if it has therein such an interest of 50% or more which it is permitted to retain or acquire under the provisions of this Decree or order of this court, and which theatre is operated by it or a subsidiary, or by a corporation in which it is permitted to retain or acquire such an interest.

VIII

For the purpose of securing compliance with this Decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of antitrust matters, and on notice to any defendant, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege, (1) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other [fol. 3786] records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Decree, and that during the times that the plaintiff shall desire such access, counsel for such defendant may be present, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interview counsel for the officer or employee interviewed and counsel for such defendant company may be present.

Information obtained pursuant to the provisions of this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

IX

Jurisdiction of this cause is retained for the purpose of

(a) enabling the plaintiff or any defendant to apply to this Court at any time for such orders and directions as may be necessary or appropriate for the interpretation, construction, application or carrying out of the Decree, for the enforcement of compliance therewith and for the punishment of willful violations thereof;

(b) enabling the plaintiff or any defendant to apply to this Court at any time to modify or to set aside the Decree or to take further proceedings in the event that it should appear that the operation of this Decree has failed to bring about a correction of the violations of the Sherman

Act hereby found to exist and which are the basis of this Decree;

[fol. 3787] (c) enabling any defendant to make any application to this Court provided for in this Decree including any application to enlarge its time to do or refrain from doing any act required by this Decree or to be relieved from any requirement of this Decree upon the ground that special circumstances exist which would make enforcement of such requirement inappropriate, oppressive, unduly burdensome or otherwise inequitable;

(d) enabling any defendant to apply to this Court at any time to modify or set aside, as to such defendant, this Decree or any modification thereof or to vacate or modify, as to such defendant, any provision thereof upon the ground that, under the economic, competitive or other conditions existing at the time of such application (regardless of whether or not such economic, competitive or other conditions are new or unforeseen), the Decree or any modification thereof or any provision thereof, as applied to such defendant is inappropriate or unnecessary or oppressive or unduly burdensome.

X.

Whenever any provision of this Decree is altered or modified or any further Decree is entered in this or any other cause awarding relief substantially similar to the relief prayed for by the amended and supplemental complaint herein and not granted by this Decree, or legislation is enacted by The Congress of the United States which has similar effect, each consenting defendant affected thereby and not agreeing thereto shall have the right at any time within one hundred twenty (120) days after such alteration, modification or further Decree, as the case may be, becomes effective, to withdraw its consent to arbitration by filing with this Court a written notification of such withdrawal. Upon any such withdrawal the withdrawing defendant shall cease to be a consenting defendant except as to licenses previously entered into and the provisions of subdivision 9 [fol. 3788] of Section II of this Decree shall, except as to such licenses, thereupon cease to be applicable to such defendant.

XI

Whenever in this Decree a defendant is required to do an act within any period of time after the date hereof such period of time shall commence upon the date when this Decree becomes final either by the expiration of the time within which to appeal therefrom without any appeal being taken or, in the event of an appeal, from the date when a final Decree is entered herein upon the mandate of the Supreme Court.

XII

The effective date of this Decree shall be stayed pending appeal.

XIII

The existing Consent Decree entered herein on November 20, 1940 shall remain in full force and effect with respect to any acts or conduct occurring prior to the effective date of this Decree.

Entered this — day of ——, 1946.

—— ——, Circuit Judge; —— —— District Judge; —— ——, District Judge.

[fol. 3789] SUGGESTED SUBSTITUTE FOR DEFENDANTS. PROPOSED DECREE II (7)

7 (a) From arbitrarily refusing the request * of an exhibitor that the distributor defendant license a feature to him for exhibition in his theatre on any run licensed by the distributor instead of licensing it to another exhibitor for exhibition in his competing theatre on such run. A distributor defendant shall not be deemed to have arbitrarily refused any such request if it has granted the

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* For the purposes of this subdivision a request by an exhibitor must be made in writing to the distributor defendant at its home office, by registered mail, and such demand shall be deemed to have been refused by the distributor defendant either upon the receipt by the exhibitor of the distributor defendant's refusal in writing, or upon the expiration of days after such mailing of the exhibitor's request.

license for the feature for such run theatre by theatre; feature by feature; solely upon the merits, and without discrimination as between the competing theatres, whether in favor of a theatre in which any other defendant has an interest; of a circuit theatre; of an old customer, or of any person whatsoever. In determining which of two competing exhibitors is entitled on the merits to the license for a particular feature for his theatre, the distributor defendant shall take into consideration the following factors, among others, and accord to them the importance and weight to which each is entitled regardless of the order in which they are listed.

[fol. 3790] (1) The film revenue which the distributor defendant will derive from each theatre for the exhibition of such feature on the run in question, and upon the terms offered by the exhibitor. In estimating such film revenue, the distributor defendant should take into consideration, among other things:

The number of days for which and the particular days of the week or year or other playing arrangements upon which each exhibitor plans to play the feature; the character, location and size of each theatre; the type of entertainment which each exhibitor intends to present with the feature involved and which the exhibitor in the past has customarily offered the public; the appointments and equipment of each theatre; transit facilities; the admission prices of each theatre as set by each exhibitor for the period of the exhibition of the feature; the distributor defendant's actual experience with each of the exhibitors in fulfilling its obligations in past contracts; each exhibitor's reputation generally in the industry and in the community for honesty, fair dealing and showmanship; and the financial responsibility of the exhibitor operating each of the theatres involved.

[fol. 3791] (2) The comparative suitability of the theatres for the advantageous exhibition of the distributor defendant's feature on the run in question; and

(3) The effect which the exhibition of the feature in each of the theatres would have upon other exhibitions of the feature.

7 (b) From refusing to license its features for exhibition in an exhibitor's theatre on some run (to be desig-

nated by the distributor) upon terms and conditions fixed by the distributor defendant which are not calculated to defeat the purposes of this subdivision 7 (b), if the exhibitor can satisfy reasonable minimum standards of theatre operation and is reputable and responsible, unless the granting of a run on any terms to such exhibitor for said theatre will have the effect of reducing the defendant distributor's total film revenue in the competitive area in which such exhibitor's theatre is located.

C. Arbitration Under Section II 7. (a)

Controversies arising upon the complaint of an exhibitor that a distributor defendant has failed to comply with the provisions of Subdivision 7 (a) of Section II of this Decree shall be subject to arbitration in the manner provided in the Rules of Arbitration.

If the arbitrator finds in favor of the distributor defendant, he shall dismiss the complaint.

[fol. 3792] If the arbitrator finds that the distributor defendant has arbitrarily refused to license the feature or features to the complainant on the run requested, and has instead licensed it or them to a competitor of the complainant on such run, he shall make an award against the distributor defendant, which award shall not affect any license to exhibit any features then under license to the complainant's competitor, but shall direct the distributor defendant thereafter in good faith to afford the complainant as well as such competitor the opportunity to negotiate for such run of any features thereafter released by the distributor defendant, for exhibition on such run, for which they desire to negotiate, and the arbitrator may in addition, in his discretion, direct the distributor defendant to pay to the complainant his actual pecuniary loss resulting from the distributor defendant's failure to comply with sub-division 7 (a) of this Section II, which damages shall be in the sum of not less than $100 nor more than $5,000.

After a final award in favor of a complaining exhibitor has been made under this section, such exhibitor may institute a further arbitration proceeding (to be held before the arbitrator who made the original award, if available) upon the ground that such award has not been complied with in good faith by the distributor defendant

against which it was entered, and in any such proceeding, if the arbitrator shall find that the distributor defendant has not complied in good faith with the original award, [fol. 3793] he may award further damages to the complaining exhibitor for his actual pecuniary loss resulting from the defendant distributor's failure to comply with the original award, which damages shall not be less than $100 nor more than $5,000.

An exhibitor shall have no right to assert such claim unless the arbitration shall be commenced within thirty (30) days after the refusal constituting the claimed non-compliance with Subdivision 7 (a) of this Section II.

D. Arbitration Under Section II 7 (b)

Controversies arising upon the complaint of an exhibitor that a distributor defendant has not complied with the provisions of subdivision 7 (b) of this Section II, shall be subject to arbitration in the manner provided in the Rules of Arbitration.

If the Arbitrator finds in favor of the distributor defendant, he shall enter an award dismissing the complaint.

If the Arbitrator finds in favor of the complainant, he shall make an award directing the distributor defendant thereafter in good faith to offer its features for license to the complainant for exhibition in said theatre on a run to be designated by the distributor and upon terms and conditions fixed by the distributor defendant which are not calculated to defeat the purposes of said subdivision 7 (b) of this Section II. The burden of showing that granting a run on any terms to the complainant will have [fol. 3794] the effect of reducing the distributor's total film revenue in the competitive area in which the complainant's theatre is located shall be upon the distributor.

Any distributor defendant affected by such an award may institute a further arbitration proceeding to be relieved therefrom on the ground that since the making of the award the granting of a run in compliance therewith has had the effect of reducing the distributor defendant's total film revenue in the competitive area in which the complainant's theatre is located, and, in the event that the Arbitrator finds that the granting of a run in compliance with the award has had the effect of reducing the distributor defendant's total film revenue in said area, he shall vacate the award.

E. Election of Remedies

Any exhibitor shall be free to avail himself of the right (1) to file a complaint under the arbitration provisions of this subdivision 9 of this Section II of this Decree or (2) to pursue remedies at law or in equity, but his election of one remedy or the other as a particular controversy shall be final.

10. Nothing contained in this Decree, affording to exhibitors the right to proceed by Arbitration, as in this Decree provided, shall impair or affect the right of the plaintiff to take any proceedings which it otherwise could to enforce the provisions of this Decree or to punish wilful violation.

[fol. 3795] In the District Court of the United States

[Title omitted]

Defendant United Artists Corporation's Proposed Decree

The Court having rendered its opinion on June 11, 1946, and having duly considered the proposals of the parties as to its findings of fact and conclusions of law in accordance with said opinion wherein certain of the defendants herein were found to have violated Sections 1 and 2 of the Act of Congress, approved July 2, 1890, 26 Stat. 209, commonly known as the Sherman Act,

It is hereby ordered, adjudged and decreed as follows, as to the defendant, United Artists Corporation:

I

1. The defendant, United Artists Corporation, is hereby enjoined from granting any license for the exhibition of any picture distributed by it wherein the minimum admission prices for the public performance of said motion picture in any theatre, are fixed by United Artists Corporation and the exhibitor party to said agreement;

2. From agreeing with other distributors or with any group of exhibitors to fix or maintain uniform systems of clearances;

3. From granting any clearance in excess of what is reasonably necessary to protect United Artists Corporation's revenue from the exhibition of the picture licensed;

[fol. 3796] 4. From licensing the exhibition of any of its motion pictures in any theatres through any agent who is also acting as licensing agent for any other exhibitor, independent or affiliated.

5. From combining, conspiring or agreeing with any exhibitors or distributors to eliminate competition;

II

Provided, however, that nothing contained in this decree shall limit, impair or affect the right of United Artists Corporation to do the following:

1. To enter into distribution agreements with independent producers, wherein and whereby each independent producer retains control over the sales policy and marketing of each picture licensed to United Artists Corporation for distribution;

2. To enter into distribution agreements with independent producers, wherein and whereby United Artists Corporation grants to such independent producer the right to approve each and every exhibition license agreement solicited by United Artists Corporation from each and every exhibitor desiring to exhibit said motion picture;

3. To have the right to insert in any exhibition license agreement it may make for the exhibition of any of its pictures a stipulation by the exhibitor that the exhibitor warrants that at the time of the making of the exhibition license agreement the exhibitor charged the minimum admission prices for admission to his theatre set out in said agreement, provided there was nothing stipulated in said agreement that the exhibitor agrees to charge said price for the exhibition of the picture licensed to him or that he would continue to maintain said minimum admission prices, and, provided, further, that said agreements contained no provisions of a penalty nature in the event the exhibitor failed to charge said minimum admission prices;

4. From offering to license the exhibition rights in and to motion pictures distributed by it separately and individu-

ally in a free and open market so that the returns therefrom shall be as large as possible;

5. To have the right, separately and independently, to license the exhibition of its pictures for separate runs and with separate clearances between runs provided said runs and said clearances are negotiated with each separate exhibitor separately and independently;

6. To roadshow * upon such terms and conditions as may be fixed by United Artists Corporation or the producer of motion pictures which have a negative cost of not less than Three Million Dollars ($3,000,000), provided that United Artists Corporation may commence only one such motion picture roadshow during any consecutive twelve months' period from and after the date of this Decree (the commencement shall be deemed to be the first roadshow exhibi- [fols. 3797-3798] tion of the picture in the United States), and, provided, further, that the licensing of such motion picture when it is subsequently placed in general release shall be subject to the terms of this Decree.

7. Further, that United Artists Corporation shall have the right to license in groups of not more than six, so-called "Western" motion pictures which are released in a series, where the principal character remains the same throughout the series and where the negative cost does not exceed the sum of Two Hundred Thousand Dollars ($200,000) per Western, such as the so-called "Hopalong Cassidy" series, provided the exhibitor shall have the right to reject not more than 20% of any series whether the same be trade shown or not trade shown, as the term is understood in the business.

III

Jurisdiction of this cause is retained for the purpose of enabling either Plaintiff or Defendant United Artists Corporation or any of the parties to the Decree to apply to the Court at any time for such orders or directions as may be necessary or appropriate for the construction or carrying

* Roadshow: A public exhibition of a motion picture in advance of its general release at admission prices higher than those customarily charged but not less than $1.00 (One Dollar) plus taxes, if any, for at least a majority of the seats.

out of the same, for the enforcement of compliance therewith and for the punishment of violations thereof, or for such other or further relief as to the Court may seem just and proper.

Entered this — day of ——, 1946.

——, Circuit Judge; ——, District Judge; ——, District Judge.

[fol. 3799] IN UNITED STATES DISTRICT COURT

[Title Omitted]

DECREE PROPOSED BY THE UNIVERSAL DEFENDANTS

The Court having rendered its opinion herein on June 11, 1946, and having filed its findings of fact and conclusions of law in accordance with said opinion wherein certain of the defendants herein were found to have violated, in the respects therein specified, Sections 1 and 2 of the Act of Congress, approved July 2, 1890, 26 Stat. 209, commonly known as the Sherman Act,

It is hereby ordered, adjudged and decreed as follows:

The petition and the amended and supplemental complaint are hereby dismissed as to Universal Corporation, Universal Pictures Company, Inc., Universal Film Exchanges, Inc., and Big U Film Exchange, Inc.

In the event the foregoing decree is refused, the Universal defendants propose the following decree in the alternative, without prejudice, however, to their contention that the petition and the amended and supplemental complaint should have been dismissed as against them, without acquiescing in any of the Court's findings or conclusions holding them guilty of violations of the Sherman Act, and without prejudice to their right to appeal therefrom.

[fol. 3800] I.

1. The complaint is dismissed as to the corporation named in the complaint as Universal Pictures Company, Inc., merged during the pendency of this case into the defendant Universal Corporation. The complaint is also dismissed as to the claims made against the remaining Uni-

versal defendants which are based upon their acts as producers, either alone or in conjunction with others, including all claims based upon alleged acts of discrimination against producers.

II.

Each of the defendants, Universal Pictures Company, Inc. (formerly known as Universal Corporation), Universal Film Exchanges, Inc., and Big U Film Exchange, Inc., are hereby enjoined:

1. From performing any existing license agreement, in which minimum prices for admission to such theatre have been fixed by the licensor, and from hereafter making any such agreement with any affiliated exhibitor. In future licenses with affiliated exhibitors Universal may require the exhibitor to state the admission price it is currently charging and to warrant the truth of such statement, but the exhibitor may not be required to agree to maintain said price.

2. From carrying out any existing agreement to grant clearances, from agreeing hereafter with any distributor to fix clearances, and from participating hereafter in any system of clearances unreasonably restraining interstate commerce.

3. From granting hereafter any clearance in excess of what is reasonably necessary to enable Universal to reap the reward to which it is entitled under the legal monopolies granted to it in its copyrights.

4. From further performing any existing franchise to which an affiliated exhibitor is a party, and from hereafter [fol. 3801] entering into any franchise to which an affiliated exhibitor is a party. Universal may retain the franchises it now has with independent exhibitors and may enter hereafter into such franchises with independent exhibitors or with any exhibitor which it may hereafter own or control, as may be necessary or desirable to enable it to exploit its own motion pictures to the fullest extent, consistent with not unreasonably restraining interstate commerce.

5. From further performing any existing formula deal or master agreement with any affiliated exhibitor, and from making hereafter any formula deal or master agreement with any affiliated exhibitor.

6. From carrying out any existing license agreement with an affiliated exhibitor, and from entering hereafter into any license agreement with an affiliated exhibitor, in which the right to exhibit one feature is conditioned upon the licensing by the exhibitor of one or more other features.

7. From refusing to grant reasonable rejection rights to exhibitors in respect of pictures not trade shown. In no event shall Universal be required to grant rejection rights in excess of 10% of the features not trade shown. The right to reject any feature must be exercised within ten days after the licensee has had an opportunity to inspect it within the distributor's exchange district in which the exhibition is to be held.

The aforesaid injunctions with respect to performing existing agreements shall be permanent; those injunctions relating to future agreements shall continue in effect pending a finding of this Court that the effects of the combination and conspiracy, found herein to have been participated in by said defendants, have been dissipated.

III.

Nothing contained in this decree shall be deemed to apply to the leasing or otherwise contracting for the temporary use of a theatre for the road showing of a particular feature.

[fol. 3802]

IV.

Nothing contained in this decree shall apply to operations or activities of any defendant outside of the Continental United States or to operations or activities of any defendant within the Continental United States in so far as they relate to the distribution or exhibition of motion pictures outside of the Continental United States.

(Footnotes 2 through 7, 9, 12 and 13 of the decree proposed by the major defendants, which define the terms, "feature", "exhibitor", "clearance", "franchise", "formula deal", "master agreement", "trade-shown", "road-show" and "continental United States", are hereby incorporated by reference. The term "independent exhibitor" means an exhibitor which is neither a defendant exhibitor in this action nor a subsidiary of a defendant (other than a Universal defendant) nor is controlled by a

defendant (other than a Universal defendant) through stock ownership. The term "affiliated exhibitor" means an exhibitor which is a defendant exhibitor in this action, or a subsidiary of a defendant (other than a Universal defendant), or an exhibitor which is controlled by a defendant (other than a Universal defendant) through stock ownership.)

V.

For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of antitrust matters, and on notice to any defendant, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege, (1) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained [fol. 3803] in this decree, and that during the times that the plaintiff shall desire such access, counsel for such defendant may be present, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interview counsel for the officer or employee interviewed and counsel for such defendant company may be present.

Information obtained pursuant to the provisions of this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

VI.

Jurisdiction of this cause is retained for the purpose of

(a) enabling the plaintiff or any Universal defendant to apply to this Court at any time for such orders and directions as may be necessary or appropriate for the interpretation, construction, application or carrying out of the decree, for the enforcement or compliance therewith and for the punishment of willful violations thereof;

(b) enabling the plaintiff or any Universal defendant to apply to this Court at any time to modify or to set aside the decree or to take further proceedings in the event that it should appear that the operation of this decree has failed to bring about a correction of the violations of the Sherman Act hereby found to exist and which are the basis of this decree;

(c) enabling any Universal defendant to make any application to this Court provided for in this decree including any application to enlarge its time to do or refrain from doing any act required by this decree or to be relieved from any requirement of this decree upon the ground that special circumstances exist which would make enforcement of such [fols. 3804-3805] requirement inappropriate, oppressive, unduly burdensome or otherwise inequitable;

(d) enabling any Universal defendant to apply to this Court at any time to modify or set aside, as to such defendant, the decree or any modification thereof or to vacate or modify, as to such defendant, any provision thereof upon the ground that under the economic, competitive or other conditions existing at the time of such application (regardless of whether or not such economic, competitive or other conditions are new or unforeseen), the decree or any modification thereof or any provision thereof, as applied to such defendant is inappropriate or unnecessary or oppressive or unduly burdensome.

VII.

Whenever in this decree a defendant is required to do an act within any period of time after the date hereof such period of time shall commence upon the date when the decree becomes final either by the expiration of the time within which to appeal therefrom without any appeal being taken or, in the event of an appeal, from the date when a final decree is entered herein upon the mandate of the Supreme Court.

VIII.

The effective date of this decree shall be stayed pending appeal.

Entered this — day of ——, 1946.

—— ——, Circuit Judge; —— ——, District Judge; —— ——, District Judge.

[fol. 3806] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MEMORANDUM OF COLUMBIA PICTURES CORPORATION ON FINDINGS AND DECREE—September 10, 1946

Jurisdiction of this Court is Limited

This is not a consent decree. At the outset, Columbia wishes to make perfectly clear that it consents to nothing in this decree.

We believe that it is the sole function of a Federal Court of Equity in a suit of this kind to enjoin the defendants only from continuing to do those acts which are in violation of the Sherman Anti-Trust Act. It is not the function of such Court to regulate an industry, to police it, and to force the defendants and others in the industry to adopt a given system of regulation and restrictions, particularly where the industry rests basically upon copyrights.

[fol. 3807] Since this Court has condemned block booking, we believe (without conceding the correctness of its position) that it should limit its Decree to an injunction against block booking. For this Court under the proposed Decree to define the methods by which pictures shall be sold—putting them on the auction block with an upset price, the giving of trade shows, limiting the defendants to their choice of customers and either directly or indirectly forcing them into an arbitration—is, we believe, beyond the jurisdiction of this Court.

The proposed provisions that have been coming down this Summer, both from the five producer-defendants and from the Government with respect to the method of sale of pictures, have clearly been beyond this Court's jurisdiction. In addition to the fact that they call for a species of regulation and policing, those provisions in the five major companies Decree resolves themselves into an attempt to force the three minor defendants into an arbitration system, although the Court itself has said in its opinion that it has no power to compel arbitration. This defendant unequivocally opposes any attempt to submit to arbitration.

The Decree proposed by the Government provides not only for injunctive relief, but the Court is asked by definition and exception to define the things which defendants may actually do, so that in effect and for all practical pur-

poses the Court is asked to make a mandatory decree of regulation and policing. This defect is inherent throughout the entire Government Decree. It applies particularly to Section II, Clause 8.

The same defect in our opinion applies to Clause II, Subdivisions 7, 8 and 9 of the Decree proposed by the five producer-exhibitor defendants. We believe that each distributor should be permitted to sell its pictures in any way it sees fit, providing it does not violate the injunction against block booking. To provide for a system, as proposed by the Government and the five producer-exhibitor [fol. 3808] defendants, of a uniform method of selling, of publicity with respect to prices, of compelling a sale by auction, etc., is an attempt to *regulate* an industry which is not on an equal footing with respect to the theatre market, each of the five producer-exhibitor defendants controlling a partial market of its own.

Moreover, the proposed method of putting pictures on the auction block, trade—showing them, and compelling sale to the highest bidder, is an unwarranted interference with the *monopoly* inherent in Columbia's copyrights.

Judge Stephens of the District Court, District of Columbia, held in no uncertain terms that the Sherman Act could not impinge upon the monopoly granted to the owner of a patent (*U. S.* v. *U. S. Gypsum Co.*, 70 U. S. Pat. Q. 49). After discussing various cases, particularly the General Electric case and the Bement case, the Court said, p. 75:

> "The patent law and the Sherman Act exist side by side, each being entitled to full recognition and application by the courts."

And in discussing the rights of the patent owner, Judge Stephens cited *Hartford-Empire Co.* v. *United States*, 323 U. S. 386. He pointed out particularly (p. 76) that Judge Dickinson in the Motion Picture Patents case had stated that the monopoly recognized by the patent law was not the monopoly condemned by the Sherman Act.

The monopoly of copyright stands on the same footing with the monopoly of patent; both monopolies are granted pursuant to Article I, Section 8 of the United States Constitution.

If we turn to the Copyright Act we find that the copyright proprietor's exclusive right to vend the work is unrestricted. We are not now talking of combinations, we

[fol. 3809] are talking of the individual copyright proprietor. This record was without a scintilla of proof that Columbia in granting a license to an exhibitor for a group of its pictures acted in concert with any other distributor. Moreover the proposed Decree has broken down whatever conspiracy was claimed to exist, and it assumes that Columbia will license its pictures to exhibitors alone and not in conspiracy with others. Consequently, Columbia is licensing a copyright alone and *not in conspiracy with others*, and under the proposed Decree the restrictions placed upon the licensing of that work are inconsistent with and destroy the exclusive rights granted under the Copyright Act.

The Decree creates a *compulsory license*. In the Copyright Act the only compulsory license provided for is that with respect to mechanical reproduction of musical compositions, for which the manufacturer is required to pay a royalty of two cents per record to the proprietor. There is no other compulsory provision in the Copyright Act. So far as we have been able to ascertain, that was the first compulsory licensing provision in any Act in the United States.

The proposed Decree, however, imposes *new* compulsory provisions. Although under the Copyright Act the proprietor (Columbia) may license whomever he pleases, he is required under the Decree to license only the highest responsible bidder. Although under the Copyright Act the proprietor (Columbia) may license his work for any kind of a showing or run, he is limited under the proposed Decree in licensing upon a first run to a theatre deemed adequate for that purpose.

Whereas under the Copyright Act the proprietor (Columbia) may license his work to an old customer, just because he is an old customer, he is prevented by this Decree from doing so. Although under the Copyright Act there is no restriction upon the proprietor (Columbia) in the [fol. 3810] *number* of copyrighted works which it may license at one time, the Decree restricts the licensing of pictures to theatre by theatre and picture by picture. It is clear that the proposed Decree impinges upon Columbia's copyrights and its monopoly in those copyrights.

The Supreme Court has quite recently (1944) held that a decree under the Sherman Anti-Trust Act cannot do this. (See *Hartford-Empire Co.* v. *United States*, 323 U. S. 386). In that case the decree contained provisions in paragraphs

21, 22, 23 and 24(a) which forbade any disposition or transfer of patented machinery other than by an outright sale; and it required Hartford to offer in writing to sell each of the present licensees of the machinery then under lease at a reasonable price to be fixed, any dispute to be settled by the Court. When the defendants attacked those provisions the Government replied that they were intended only to prevent defendants from setting up patent pools and monopolizing the patented inventions. The Court held that the District Court should have limited itself to enjoining the defendants from setting up such pools, but that it went far beyond that. It said (p. 413):

> "But the decree as entered requires that each of the defendants must hereafter forever abstain from leasing a patented machine, no matter what the date of the invention, and compels each of them if he desires to distribute patented machinery to sell the machine which embodies the patent *to everyone who applies, at a price to be fixed by the court.* The injunction as drawn is not directed at any combination, agreement or conspiracy. *It binds every defendant forever irrespective of his connection with any other or of the independence of his action.*" (Emphasis ours.)

It held that these provisions were confiscatory (p. 415). "If," it said, "as we must assume on this record, a de- [fol. 3811] fendant owns valid patents, it is difficult to say that, however much in the past such defendant has abused the rights thereby conferred, it must now dedicate them to the public." It held that a patent was property protected against appropriation both by individuals and by the Government, and that this was well settled law. At (p. 415):

> "In recognition of this quality of a patent the courts in enjoining violations of the Sherman Act arising from the use of patent licenses, agreements and leases, have abstained from action which amounted to a forfeiture of the patents."

In another paragraph of the decree, 24(b), the Court pointed out that a defendant hereafter acquiring a patent was not permitted to set the price for its use by others, or elect to use it himself, or refuse to license it or to retain it and neither use nor license it: "These," it said, "are options patent owners have always enjoyed" (p. 417). And

it pointed out that since 1877 Congress had been asked frequently to adopt a system of compulsory licensing of patents, but that it had consistently failed to enact these proposals into law. It said (p. 417):

> "It (Congress) has also rejected the proposal that a patentee found guilty of violation of the anti-trust laws should be compelled as a penalty to license all his future inventions at reasonable royalties."

The result of the decision was that paragraphs 21, 22 and 23 were eliminated from the decree, and paragraphs 24(a) and 24(b) modified. It is quite clear that the Court respected the patent monopoly enough to strike from the decree those portions of it which it felt impinged upon that monopoly, and that it regarded those provisions inserted by the Government as purely a scheme for compulsory licensing.

[fol. 3812] Since such is the holding of the Supreme Court, we believe that in this Sherman Anti-trust suit the relief should be limited to injunction. It cannot extend so far as to constitute a system of regulation for the future. The recent opinion of Judge Goodrich in *U. S.* v. *Pullman Company*, 50 Fed. Supp. 123, p. 136, is appropriate:

> "The Court's conclusion being that there has been a violation of the Sherman Act the final question is the equitable relief to be had in this suit. Counsel for the plaintiff have repeatedly suggested that in case of a finding of violation, the questions concerning relief might be referred to a master or one of the regulatory commissions to hold hearings at which exports, governmental or private, could state their views regarding proper organization of the business of passenger transportation in the United States. The Court is not inclined to view favorably so ambitious a program. *It does not regard itself as a legislative committee nor a regulatory commission.* A law suit has been brought, factual and legal conclusions reached and the relief to be afforded should be that which the Court can both understand and apply."

Block Booking

Columbia believes that the proposed findings submitted by the Government with respect to block booking are

totally inadequate and do not even begin to summarize the facts which were developed on the trial. We respectfully ask the Court to make some additional Findings of Fact which we believe were based upon the uncontraverted evidence. In addition to Findings on Block Booking, Columbia presents various other Findings which it believes are borne out by the Record. In these proposed Findings we refer the Court in many instances to the printed pages of the stenographic minutes, where the uncontradicted and unimpeached evidence supports such findings.

[fol. 3813] Additional Findings

1. In the early stages of the industry producers sold their pictures by the State Right method, both in the United States and throughout the world (1732-3). This was an uncertain operation and failed to give satisfactory revenue to the producers, and in the early 1920s the producers of pictures began to sell their pictures in blocks of a season's product in advance (1733-4). Columbia embarked on that system of distribution in 1929 and was compelled thereby to finance itself to the extent of a million dollars (1734-5). It has sold its pictures continuously since then in blocks of all or part of the season's product in advance (1735). All of the other distributing companies have sold their pictures in the same manner, except that the defendants, RKO, MGM, Twentieth Century-Fox, Warner and Paramount began to sell their pictures in blocks of five on the entry of the consent decree herein.

2. The exhibitors know fairly accurately what they purchase from Columbia when they buy its pictures in block at the beginning of each season. They know it from the history of the company, the type of releases it has, and because Columbia describes as adequately as possible its prospective pictures by title, by story and by stars (1736-7).

3. There is no such thing as blind selling (1812), and there is no proof in this record that any exhibitor in entering into a block booking contract with Columbia was misled with respect to the product or that he did not know what kind of pictures he was getting or that he was at any disadvantage by reason of such block booking contract (1736, 1759, 1812-3), and pictures are sold today as they always have been, on the star, the story, the director and similar elements (1630-3).

[fol. 3814] 4. During the period in question every agreement or contract by Columbia granting an exhibition right was in the nature of a limited exclusive right granted to a theatre owner—first the physical possession of a positive print, a tangible piece of property and second, the intangible right of license to publicly perform in his theatre the copyrighted subject contained in the positive print with no right to assign that performing right to anybody else; that the right was limited to exhibit or publicly perform said copyrighted work only in the particular theatre or theatres listed in the contract for the specific number of days included in the contract, with no right to lease or sell or in any way dispose of any part of the tangible property or print to anybody else, and with a further condition that when the public performance was completed under the contract, the print was to be returned to Columbia's exchange.

5. During the period in question Columbia did not sell or part with the title to any of the positive prints of any of the motion pictures distributed by it to any of the exhibitors exhibiting its motion pictures in the United States of America.

6. During the period in question Columbia, through its selling or licensing organization, solicited the various exhibitors of motion picture photoplays, in the United States of America, and tried to secure from said exhibitors exhibition license agreements under the terms of which said exhibitors would agree to exhibit all of the Columbia photoplays or a part of the Columbia photoplays, or any part of the Columbia photoplays that were available for exhibition for some run in said exhibitors' theatres.

7. During the period in question Columbia did not condition the licensing of any photoplay in any exhibitors' theatre upon that exhibitor's agreement to license other Columbia photoplays for exhibition in said theatre.

[fol. 3815] 8. During the period in question Columbia licensed the exhibition of its pictures both to the so-called affiliated theatres and independent theatres on flat rental terms, percentage terms and guarantee against percentage terms.

9. During the period in question Columbia licensed its pictures for exhibition to both affiliated and independent

theatres on so-called "selective" contracts and did not discriminate in favor of affiliated against independent theatres, and granted not only the same rights of selection to both affiliated and independent theatres but granted greater selectivity to the independents.

10. During each of the years in question in excess of 600 feature photoplays were generally released in the United States of America, exclusive of so-called foreign made films. That Columbia releases during the same period equalled a comparatively small number of feature photoplays generally released in the United States each year including top features, features of lesser merit, Westerns and shorts; that at no time during said period did Columbia monopolize or attempt to monopolize or had it the power to monopolize the distribution market in the United States of America, or any section thereof.

11. In order to secure as much revenue as possible from each picture Columbia licensed its pictures on these runs with variant time intervals between each run which time intervals are generally referred to in the business as "clearance periods."

12. In many of the contracts in evidence the clearance provisions are set out in the contract; in many others there are no provisions for clearance.

13. The nature, extent and area of clearance in every Columbia contract was a matter of separate negotiation [fol. 3816] between Columbia and the other contracting party, or may have been arrived at as the result of a decision of the Board of Arbitration, or the Appeal Board operating under the Consent Decree to which Columbia was not a party, or may have been a clearance period that had been recognized in the trade as reasonable and had been in existence a long period of time, or may have been the result of a Board of Arbitration operating under the N.R.A., or may have been a clearance that had been originally negotiated between Columbia and the operator of the theatre some years back and was not expressed in the contract in writing but was generally understood between the contracting parties as the clearance that was to be given under the particular negotiation.

14. Columbia granted clearance not only to protect the revenue of the exhibitor but also to protect the revenue of the distributor and the producer of each and every motion picture released by Columbia during the period in question and whenever and wherever it granted clearance.

15. That by licensing separate runs and making separate runs available to all types and classes of theatres, charging all types of admissions, Columbia made it possible, during the period in question, for the largest number of theatres to exhibit its pictures on all types and variants of film rental so that the largest portion of the public was able to see the pictures distributed by Columbia during said period.

16. That by so doing Columbia secured the widest flow in Interstate Commerce of the positive prints distributed by it during the period in question.

17. There is no proof in this record that Columbia granted to any large theatre circuit any unreasonable [fol. 3817] clearance or unjustified prior runs for any of their theatres.

18. In some of the contracts in evidence Columbia included a provision which fixed the admission price that the exhibitor would charge any member of the public paying an admission fee to view the exhibition of Columbia's pictures in some of the theatres to which Columbia licensed its pictures. The admission prices inserted in said agreement were the prices then charged by the exhibitor at the time the exhibition license agreements were negotiated between the respective exhibitor and Columbia for the showing of Columbia pictures in the theatre in question.

19. The insertion of this admission price provision was for a two-fold purpose, one, to guarantee to Columbia that if it sold on a percentage basis that its percentage would be based upon a fixed admission price, or if it sold on a flat rental that the intake from the engagement would be sufficient to guarantee payment of the flat rental stipulated; two, to protect each and every exhibitor playing these Columbia pictures subsequently to the first exhibitor against the practise of the first exhibitor reducing ad-

missions either to the level or below the level of the subsequent run theatres.

20. That whenever any admission price provision was inserted, as aforesaid, in any contract, the insertion was the result of independent and separate negotiation between each exhibitor and Columbia without consultation of any kind or character with any other distributor or exhibitor.

21. That if any similarity in admission prices in any of the Columbia exhibition license agreements to any of the admission prices in any other distributor's exhibition [fol. 3818] license agreement occurred, it was due wholly and solely to the fact that the admission prices stipulated by the exhibitor in the contract were the admission prices which prevailed at the time, and which the exhibitor charged regularly at his theatre to any person desiring to see pictures in that particular theatre. At no time during the period in question did Columbia make any license agreements with any exhibitor fixing the resale price of any of the tangible property licensed to any of the exhibitors.

22. The course of conduct of the defendant, Columbia, during the period in question, was to license its product for first run or any run open to independent exhibitors either operating in competition with the defendant exhibitors or not in competition, including the key cities in the United States having a population of 100,000 or over, wherever independent exhibitors operated theatres.

23. In conducting its business of distributing motion pictures and making exhibition license agreements during the period in question, Columbia conducted all its negotiations and made all its contracts, whether with independents or affiliated exhibitors, or unaffiliated circuits, without any intent, purpose or effect to bring about a monopoly in the distribution or exhibition business, or to unduly restrain Interstate Commerce, but merely licensed its product in the market the way it found it, and with the sole purpose and intent of receiving the maximum amount of revenue legitimately possible for all pictures distributed by it.

24. The trade shows which have been introduced by the defendants, RKO, MGM, Twentieth Century-Fox, War-

ner and Paramount under the Consent Decree have been very poorly attended by exhibitors (1632-3), who apparently do not require them for the purpose of familiarizing themselves with the product of the respective distributors.

[fol. 3819] 25. Columbia owns no theatres and may not look to such sources for its market. Other companies which sell their pictures by block booking and which own no theatres are Universal, Republic, Monogram and Producer's Releasing Corporation.

26. The method of selling pictures by block booking eliminates to some extent the hazard and gamble involved in producing pictures. In 1928-9 Columbia spent $1,632,300 in production; in 1944-5 it spent (estimated), $16,689,700 (Exhibit C-2). It could not have increased its budget and spent these moneys unless it had the assurance of a ready market which only block booking has given it, and block booking is vital and necessary to Columbia for its continued existence as a producer (1737). To sell pictures singly Columbia would have to change its whole financial base, it would have to obtain moneys by way of refinancing or stock issue to sink into an inventory and keep the same on the shelf for a period of time; whereas block booking enables Columbia to turn over its pictures rapidly and to put its money back into the production of pictures quickly (1737). To sell pictures singly means to freeze Columbia's capital so that it would require more capital with which to operate, and that Columbia could not very well do (1754).

27. If Columbia has to sell pictures singly it will have to go through many more sales campaigns each year and increase its personnel, all at a substantial increase in overhead (1749-50). The exhibitors throughout the country generally have accepted block booking as an advantageous form of purchasing pictures and they desire to continue to purchase their pictures by block booking, as it gives them an assurance of product (1737, 1760, 2018); and exhibitors ever since the Consent Decree have demanded the restoration of block booking with respect to the defendants, MGM, RKO, Twentieth Century-Fox, [fol. 3820] Warner and Paramount and have voiced great dissatisfaction in their conventions and meetings with the sale of pictures in small blocks of five or less (1761-3,

1789-91). There is no proof in this record that block booking violates the Sherman Act or that it is in restraint of trade or commerce.

28. Columbia and Universal under their respective contracts (2019) give a substantial degree of selectivity to their exhibitors when they sell their pictures in block (2017-8) and they give a greater degree of selectivity to the independents than to the affiliated exhibitors (1750). In this manner the exhibitor is protected against having bad pictures foisted upon him.

29. Columbia gives film rental adjustments to all of its exhibitor customers, and in fact, gives greater adjustments to independents than it does to affiliates (1757).

30. A great deal of Columbia's product is sold to the great mass of theatres in small towns on double features (1758).

31. Block booking has been a common method of selling pictures; it reduces selling expenses, but does not freeze pictures and inventories, and keeps them moving off the shelves as rapidly as they are produced; it creates a ready market for the producers and enables them to invest their capital with some reasonable hope of recoupment; and is a form of selling which the exhibitors desire to continue, as it assures them a ready market (2018) and relieves them of the burden, time and expense of making individual deals for each picture which they exhibit. There is no proof in this record that any exhibitor was ever hurt or injured in his business or property by reason of block booking.

[fol. 3821] 32. No exhibitor took the stand and testified with respect to block booking.

33. The abolition of block booking in this industry places Columbia at an economic disadvantage as against all other producers of motion pictures who own theatres, because the defendants who own theatres have a ready market for their pictures and may to some extent reduce the gamble and hazard of production, whereas defendant, Columbia, and other producers similarly situated have no ready market, so that in effect the abolition of block booking sought by the Government is a plain case of discrimination in favor of the defendants herein who

own their own theatres, and far from freeing the market for competition, the net result will be just the opposite.

34. Block booking has been found to be a perfectly legal practice by the courts in *Westway Theatres, Inc.* v. *Twentieth Century-Fox Company, Federal Trade Commission* v. *Paramount*, and *United States* v. *Crescent* and there is no decision by the Supreme Court which has ever condemned it.

Conclusions of Law

35. The combination or conspiracy alleged in the Complaint as to Columbia has not been established. The Columbia did not at any time during the period involved in this case, combine with the other defendants or any of their affiliates unreasonably to restrain Interstate trade or commerce in motion picture films or to monopolize or attempt to monopolize the distribution of motion picture films in the United States of America.

36. A Decree should be entered herein dismissing the complaint against Columbia.

[fol. 3822]

Arbitration

Defendant, Columbia, cannot enter into any arbitration plan or scheme as suggested by the opinion and by the Decree proposed by the five major defendants.

Readjustment Period

With respect to master agreements or franchise agreements, Columbia respectfully asks that this Court grant it until at least January 1st, 1947 in order to abrogate these agreements. It will need that time as a minimum.

With respect to readjusting itself to selling pictures singly, Columbia will require at least a year from July 1st, that is to say, until July 1st, 1947, in order to give itself an adequate supply of pictures and create an inventory, and particularly in order to finance itself for that purpose. While the Government has consented to January 1st, 1947, we feel that that is insufficient, and the Government is somewhat arbitrary in seeking to compel Columbia to go into this new method on such short notice. The few months additional that Columbia seeks can in no wise impose any hardship upon the industry, because block booking, after all, has been a uniform business prac-

tice in the industry for over twenty years, and no reason exists why Columbia should be penalized under these circumstances. We ask that somewhere in this Decree there should be an automatic provision for this extension period for readjustment with respect to the matters outlined hereinabove.

Blind Selling

Cancellation, privileges or selectivity in such cases should be limited to not more than twenty per cent., instead of twenty-five per cent., as proposed in the opinion of the Court. We think that the percentage should be reduced so as to give defendant, Columbia, and other producers similarly situated some protection against having a great deal of their pictures thrown back at them.

[fol. 3823] Booking Combines

We should like to have the Court insert somewhere in its Decree a provision enjoining *all* the defendants:

> "From offering films for license in the future to any agent who is acting for any group of exhibitors, independent or affiliated, in which he has no proprietary interest."

While the Decree as presently proposed by the Government may be open to the construction that booking combines throughout the country cannot impose their restraints upon these defendants under the proposed method of selling picture by picture and theatre by theatre, we think that there is too much ambiguity in the Decree at present with respect to the above situation. The evidence clearly shows that in addition to the affiliates there are unaffiliated circuits and even booking combinations throughout the country. No reason exists why they should have any special immunity. It is therefore requested that the above provision in the Decree be inserted so that it will catch them.

Respectfully submitted, Schwartz & Frohlich, Solicitors for Defendant Columbia. Louis D. Frohlich, Arthur Schwartz, Irving Moross, Max H. Rose, of Counsel.

Dated, New York, September 10th, 1946.

[fol. 3824] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL MEMORANDUM OF COLUMBIA PICTURES CORPORATION ON FINDINGS AND DECREE—October 16, 1946

The Government served its proposed decree on October 7, 1946, in which it has further sought to restrict the selling of motion pictures by the defendant distributors. Columbia takes exception particularly to paragraphs 8, 9 and 10 of Section II. These paragraphs read as follows:

"8. From performing or entering into any license in which the license to exhibit one feature is conditioned upon the licensee's taking one or more other features. Licenses to exhibit more than one feature may be included in a single instrument provided the licensee shall have had the opportunity to bid for each feature separately and shall have made the best bid for each picture so included. To the extent that any of the pictures have not been trade shown prior to the granting of the licenses for more than a single picture, the licensee shall be given, by [fol. 3825] the licensor, the right to reject 25% of such pictures not trade shown prior to the granting of the license, such right of rejection to be exercised in the order of release within 10 days after there has been an opportunity afforded to the licensee to inspect it.

"9. From licensing any film more than *six months* in advance of its release.

"10. From offering films for license in the future for exhibition in any theatre not its own in any manner except the following:

(a) A license to exhibit each film released for public exhibition shall be offered upon *reasonable terms* for some run to the operator of each theatre which desires to exhibit it;

(b) Where a run is desired upon terms which exclude simultaneous exhibition in competing theatres, it shall be offered to the competing exhibitors involved having a theatre adequate to show the

picture upon such a run and granted to the highest responsible bidder, provided that such exclusive run does not unreasonably restrict competition in the area covered.

(c) Each license shall be granted solely upon the merits and without discrimination in favor of affiliates, old customers, or any person whatsoever;

(d) Each license shall be offered and taken theatre by theatre and *picture by picture;* and

(e) Each license shall specify a *date of availability* of a print for the run licensed and provide that such run shall commence *within 30 days* after such availability.

Attention is called to paragraph 8, where the exhibitor is given the right to reject 25% of pictures not previously [fol. 3826] trade shown. In our earlier memorandum we called the Court's attention to the fact that this percentage was too high, and should in no event exceed 20%. We believe that the distributor is entitled to as much protection as the exhibitor, and giving the exhibitor that substantial rejection right practically places the distributor at his mercy and can result in nothing less than reduced production, which neither Columbia nor the Government wants. Apparently the Government seeks to encourage production so as to make the greatest number of pictures available to exhibitors, particularly independent exhibitors. In the interests of increased production and availability of pictures to the greatest number of exhibitors, we believe that this percentage should be reduced to at least 20% at most, and if possible, to a smaller percentage.

In any event, it is the smaller companies like Columbia which will be adversely affected by so substantial a percentage as 25%. It is these companies which produce a great proportion of the second feature pictures; this percentage penalizes them in favor of the five major defendants, who, since the Consent Decree, have been selling upon the basis of trade showing, and will in all probability continue to do so.

Paragraph 9, which seeks to prohibit the licensing of a film more than six months in advance of its release, is an unfair and burdensome provision injected at the last moment by the Government, (it did not appear in the former

draft of the decree) and is thoroughly inconsistent with the provisions of the proposed decree and of the opinion, which permits distributors like Columbia to sell their pictures in blocks, providing each picture is sold on a separate basis. Clearly, under the opinion and the proposed decree, Columbia is permitted to sell its season's product providing each picture is sold separately, bargained for separately, priced separately and competitive bidding has been had separately. [fol. 3827] Of what earthly use is that provision to Columbia if it must come within the restraint of this six months' provision? Pictures take a considerable time in the making, there are delays in production; it is impossible sometimes to secure the proper artists; stories have to be rewritten; all sorts of elements arise that delay production, and as a result it is impossible to foretell with any degree of accuracy when a given picture will be released. That is the experience of the entire industry, and the Government is well aware of it. It pretends that it needs the six months' provision in order to prevent pictures being kept off the market, and potential competitors given an opportunity to bid for the product. That is a complete sham, because each competitor has already had an opportunity to compete for each of these pictures. Consequently, this is nothing but an indirect attempt on the part of the Government to take away from Columbia its right to sell all of its product at the beginning of the season, and to make it impossible to carry out what the Court is willing to grant and what the Government itself has not complained of.

Moreover, this clause places Columbia in a very disadvantageous economic position as against the Big Five. Those companies have large inventories of pictures; they have had many artists and directors under contract, and they made a great many pictures which are on the shelves ready to be released. As previously pointed out, Columbia is not in that favorable position. It has not had the capital to build up a large inventory, so that it cannot compete with the Big Five regardless of the additional advantage which the Big Five have with their own theatres.

In addition to these elements, this clause would require Columbia to embark upon a system of exploitation which is burdensome and expensive; it would have to double its selling campaign and its costs of exploitation; and the same holds true of every little producing company. Consequently, it becomes apparent that the Government by the insertion

[fol. 3828] of this provision, is either knowingly or unknowingly placing a terrific burden upon the smaller companies, and advantaging the Big Five with their huge inventories and capital investment.

Paragraph 10, Subdivision (b), is bad for the reason that it is unclear, vague and indefinite and is susceptible of many conflicting constructions. Particularly bad is the provision that an exclusive run must not unreasonably restrict competition in the area covered. In other words, Columbia on the one hand is given the right to grant an exclusive run to the highest bidder in a given territory. On the other hand, Columbia is required now to ascertain whether by giving the exhibitor such exclusive run it is unreasonably restraining competition in that area. How may Columbia determine that, particularly in a large city where there are four or five hundred theatres, like New York City? What is the area which is covered, and how is Columbia to determine whether the giving of that run for that picture in that area will restrain competition? This clause simply places a distributor like Columbia at the complete mercy of the Government, which may come in every day in the week and claim that Columbia has violated the decree. We think that that is an extremely loose clause and would result in making it impossible to license anyone for an exclusive run in an area except at the extreme hazard of being charged with violating the decree. In other words, the Government is indirectly seeking to prevent the granting of licenses for an exclusive run, which has been one of its avowed aims. It hopes to accomplish this by placing Columbia, for one, at the Government's mercy in every area where there are substantial competing theatres for an exclusive run.

Furthermore, as a practical matter, all exclusive contracts restrain competition to some extent and the line between reasonable and unreasonable restraint is so nebulous that it is unfair to make a distributor judge, at his peril, [fol. 3829] where the line is drawn, particularly in cases like this where Columbia has many thousands of contracts in competitive areas each year.

Moreover, the practical result of operating under this section might be that Columbia would be compelled to accept less money for its pictures, because it might have to turn down the highest bidder.

The Government pretends that it wants auction block selling, but it ties a long string to it which practically pre-

vents Columbia from selling to the highest bidder, except at its own peril. That situation is one that should not be tolerated. If there is to be auction block selling, let's have auction block selling and not a pretended selling; at least let us have such selling without any unfair restrictions placed upon it.

Moreover, every exhibitor in the territory is at least entitled to *some* run, as provided in paragraph 10, Subdivision (a). If Columbia gives one exhibitor the first run, the competing exhibitor, who has not bid high enough, is still entitled to get a subsequent run and can bid for that. Therefore, it is unnecessary to put in the restriction which is contained in the provisio at the end of Subdivision (b).

Paragraph 10, Subdivision (c)—Under this paragraph apparently all that Columbia could consider would be the price as bid between the competing theatres. We believe that price should not be the only criterion upon which to base a license. There are other criteria of even greater importance. Some theatres by their prestige, location, clientele and showmanship enhance the value of a picture, and give it prestige and standing which result ultimately in greater income throughout the particular territory, as well as in the country. Some theatres would hurt the prestige of the picture. Why shall not Columbia, at least, have the privilege of protecting its revenue on an overall basis by giving consideration as well to those elements in addition to the actual price bid?

[fol. 3830] Paragraph 10, Subdivision (e) is an impracticable provi on. It is utterly impossible to make a contract with an exhibitor for a second run or a subsequent run under this clause because there is no way of telling in advance when the first run will be sold, or having been sold, when it will be over. The actual opening date of a first run can never be fixed with any certainty, because the theatre may be holding over a prior picture on an extended run, and cannot be in a position to take the first run until that prior picture has exhausted its run. That may take weeks and weeks, and frequently does take such period of time. Consequently, this clause would limit Columbia to making only first run contracts for obviously it may not make contracts for second or subsequent runs until the first run picture has been played and the run completed. That seriously cripples Columbia's operations, and would cause endless confusion. It would make it impossible to have an orderly exploitation

of the picture with first and subsequent runs in any given territory, because no one can ascertain what the date of availability would be for subsequent runs.

Moreover, this clause would as a practical matter destroy all clearances, because regardless of the amount of clearance given, whether reasonable or unreasonable, any subsequent run theatre would be entitled to play the picture within thirty days after the date of availability for the run licensed. Inasmuch as the Court in its opinion has declared that reasonable clearance is legal and may still be given by distributors, and the Government has also concurred and acquiesced in that position, we believe that this subdivision (e) is of no purpose and can help nobody, except to completely confuse all proper clearance arrangements which will be entered into.

Section VI—Paragraphs 8, 9 and 10 of Section II are under this clause made operative January 1st, 1947. We again urge that Columbia should be given at least until [fol. 3831] July 1st, 1947 within which to bring itself within the new and radical change in its selling operations.

It had been contemplated, as we understood it, that there would be some agreement between the Government and the defendants with respect to the form of decree. That apparently is a forlorn hope. We are now down towards the end of October. The decree may not be signed for a few weeks. That would give Columbia only four or five weeks within which to change its method of operation, and to attempt to obtain some backlog or inventory with which to operate. It is impossible to do that within this short period of time. The period down to July 1st is an absolute necessity to prevent this company from being hurt by this change of condition, and we think the Government has been rather arbitrary and unfair in insisting on an immediate change of so radical a nature on such short notice.

We believe that the above clauses are bad, and that they are a further restriction upon the plaintiff's copyrights, and are a complete destruction of the exclusive rights which are granted to plaintiff under the Copyright Act.

We believe that this Court, sitting as a Court of Equity to enjoin violations of the Sherman Anti-Trust Act, may not as part of its relief destroy the exclusive monopoly inherent in the ownership of these copyrights.

The Copyright Act does not restrict the time within which a proprietor may license his work, nor the manner in which

it may be licensed, nor the person to whom it may be licensed, nor the terms upon which it may be licensed. Nor is the copyright proprietor required to license the work at all. Licensing the work is not a condition for registration. Publication with notice is all that is required. That unrestricted right may only be regulated where there is a combination with respect to a group of copyright owners; but where that combination has been enjoined, as is done by this [fol. 3832] decree, and each distributor licenses his work alone and separately and not in combination or conspiracy, he should be permitted to enjoy to the fullest extent the monopoly conferred upon him by the Copyright Act.

The Government by its first decree of August 15th, 1946, inserted provisions which were deemed objectionable because they conflicted with the monopoly of the Copyright Act. We so pointed out to this Court, and the Government received a copy of our brief. Thereafter the Government by this Proposed Decree (October 7, 1946) has attempted to go even further in imposing more rigorous and restrictive provisions.

Indeed, the Government frankly admits that it seeks a compulsory license provision which this Court by judicial fiat is to engraft upon the Copyright Law. On page 9 of its memorandum in support of its findings, the Government says:

> "We have also modified the auction selling method proposed by the Court to provide for the *compulsory licensing* of some run upon reasonable terms * * *. The 'some run' provision may, we think, be analogized to compulsory patent licensing on reasonable royalties—relief which has in the past been granted against defendants which had used illegal restrictive licensing practices similar to those involved here."

The Government cites no case in support of its startling statement although it speaks of such relief having been granted in the past. In a footnote, however, it refers to Section VI of the Consent Decree in this case.

But consent of the parties is not a precedent nor a substitute for judicial mandate. The Government can cite no case, *because, there is no case which supports this fantastic claim.*

The whole theory of reasonable royalties in patents was recently expounded in *Widenski* v. *Shapiro, Bernstein Com-*

pany, 147 Fed. (2nd) 909. In that case a copyright pro-
[fol. 3833] prietor of a musical composition had obtained a decree for injunction and $250 minimum damage against a tavern keeper who had unlawfully performed the composition (54 Fed. Supp. 780). He raised the point that inasmuch as the defendant had been previously offered a license for $90.00 per year, such license fee was analogous to the "established license" or to the "reasonable royalty" which is given to patent owners in infringement suits when they are unable to prove actual damage or to find any profits. The plaintiff there claimed that the rule of established or reasonable royalty which prevailed in patent cases was a substitute or a makeshift device, because the patent statutes contain no provision for statutory damage; and that inasmuch as the Copyright Law provides for statutory damages (17 U. S. C. A. Sec. 25), there was no occasion for applying such rule in copyright cases, since in the absence of actual damage or profits, the prevailing copyright proprietor could nevertheless secure statutory damage. The Circuit Court of Appeals sustained that claim. Judge Woodbury, in his opinion, said:

> "It is indicated in the case last cited and established in *Enterprise Mfg. Co.* v. *Shakespeare Co.*, 141 F. (2d) 916, 919, and the cases cited therein, that proof of either established or reasonable royalties may be resorted to in patent cases only when the patentee is unable to make satisfactory proof of his actual damage and the actual profits of the infringer. That is to say, a plaintiff in a patent case, if he prevails on the issue of infringement, may recover upon the basis of an established or reasonable royalty only after he has failed to prove satisfactorily his own loss and the infringer's profits. Thus the royalty rule provides successful plaintiffs in patent suits who have been harmed but cannot prove either their actual damages or the defendant's actual profits with a means to es-
> [fol. 3834]. cape the hollow victory of an award of purely nominal damages. But the Copyright Act itself makes provision for similarly situated plaintiffs in copyright cases in the 'inlieu' clause of §25(b), a provision not found in the corresponding section of the Patent Law, (35 U. S. C. §70), and from this we conclude that it is a substitute for the established or reasonable royalty rule applied in patent cases."

It is manifest, therefore, that so far as *copyrights* are concerned, the Courts may not impose any established or reasonable license fee as a measure of damage, but are compelled to award either actual damage or statutory damage, or profits.

Consequently, the Government's argument falls flat.

Moreover, the *Empire-Hartford* case pointed out that even so far as *patents* are concerned, there is no such thing as a compulsory license. The rule of established or reasonable royalty is purely a rule of damage in an infringement suit. Congress alone would have the right to legislate a compulsory license provision; and, as pointed out in the *Empire-Hartford* case, Congress since 1879 has repeatedly refused to do so.

On what theory, therefore, does the Government justify these provisions in paragraphs 8, 9 and 10 of Section II of its decree with respect to copyrighted works.

It is apparently the Government's aim to destroy the monopoly of copyright by the ingenious device of these restrictive paragraphs above quoted. We believe that the Supreme Court would never sustain a decree which contained such provisions, and we believe that these restrictions fall within the condemnation of the *Hartford-Empire* case and should be deleted from any decree signed by this Court.

[fol. 3835] Findings

The Government's Findings are not Findings in any sense of the word, but are nothing more than a paraphrase of the opinion in part. We believe that a Finding of Fact should not be a legal argument but should be a plain description of facts which were proven on the trial, particularly as in this case a great deal of the proof came in without contradiction or impeachment.

The Government's Findings on block booking and blind selling (Findings Nos. 32, 33 and 34) illustrate the defect in its Findings. The Government completely overlooks the proof on the trial, closes its eyes to the testimony of witnesses who took the stand, and then calmly proceeds to speak about non-existent facts. It says, "Because of complaints of block booking and blind selling, etc., etc." Where is there any proof in this record of such complaints? Indeed, the proof is to the contrary, and to the effect that exhibitors have demanded and still demand block booking.

What kind of a Finding of Fact is it which *reverses* the testimony?

The Government paraphrases the opinion in Finding 34 to the extent that trade shows which are designed to prevent blind selling are poorly attended by exhibitors. The only inference to be drawn from that fact (which is proven in the record without contradiction) is that exhibitors do not want and do not require trade showings. They evidently prefer to buy their pictures without seeing them in advance. Who, then, has been hurt by the practice of Block Booking, and why should it be stricken down and why should not Columbia's Findings be adopted?

We have not been furnished with a copy of the proposed Decree and Findings by the five major defendants, which we understand have been filed and served on October 7th, 1946, so we are unable to comment thereon.

[fol. 3836] We respectfully submit that paragraphs 8, 9 and 10 of Section II of the Proposed Decree should be eliminated and Columbia's Findings of Fact should be adopted by this Court.

Respectfully submitted, Schwartz & Frohlich, Solicitors for Defendant Columbia.

Louis D. Frohlich, Arthur Schwartz, Irving Moross, Max H. Rose, of Counsel.

Dated, New York, October 16th, 1946.

[fol. 3837] In United States District Court

[Title omitted]

Findings of Fact and Conclusions of Law—December 31, 1946

This action having been duly tried and the proofs and arguments of the respective parties having been duly heard and considered, this court, having filed its opinion herein dated June 11, 1946, does hereby find and decide as follows:

Findings of Fact

1. The following are definitions of terms used in these findings and in the judgment to be entered hereon:

Block-booking—The practice of licensing, or offering for license, one feature, or group of features, upon condition

[fol. 3838] that the exhibitor shall also license another feature or group of features released by the distributor during a given period.

Clearance—The period of time, usually stipulated in license contracts, which must elapse between runs of the same feature within a particular area or in specified theatres.

Exchange District—An area in which an office is maintained by a distributor for the purpose of soliciting license agreements for the exhibition of its pictures in theatres situated throughout the territory served by the exchange and for the physical distribution of such films throughout this territory.

Feature—Any motion picture, regardless of topic, the length of the film of which is in excess of 4,000 feet.

Formula Deal—A licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross.

Franchise—A licensing agreement, or series of licensing agreements, entered into as part of the same transaction, in effect for more than one motion picture season and covering the exhibition of features released by one distributor during the entire period of the agreement.

Independent—A producer, distributor, or exhibitor, as the context requires, which is not a defendant in this action or a subsidiary or affiliate of a defendant.

Master Agreement—A licensing agreement, also known as a "blanket deal", covering the exhibition of features in a number of theatres, usually comprising a circuit.

Motion Picture Season—A one-year period beginning about September 1 of each year.

[fol. 3839] *Road-show*—A public exhibition of a feature in a limited number of theatres, in advance of its general release, at admission prices higher than those customarily charged in first-run theatres in the areas where they are located.

Runs—The successive exhibitions of a feature in a given area, first-run being the first exhibition in that area, second

run being the next subsequent, and so on, and shall include also successive exhibitions in different theatres, even though such theatres may be under a common ownership or management.

Trade-Showing—A private exhibition of a feature prior to its release for public exhibition.

Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 1501 Broadway, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

3. Paramount Film Distributing Corporation, a wholly owned subsidiary of Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1501 Broadway, New York, New York, and is engaged in the distribution branch of the industry.

4. In 1916 or 1917, a group of exhibitors which controlled many of the then best theatres throughout the country organized First National Exhibitors Circuit, Inc. Although this corporation was initially organized to function as a film buying combine, it evolved into a film producing company first by financing the production of pictures by others for exhibition in the theatres of its members and finally by producing its own motion pictures.

[fol. 3840] 5. The members of this First National group, consisting of many of the most important exhibitors in the United States controlling many of the best theatres, became franchise holders of the distributing company which they formed. They acquired not only the right to exhibit in their own theatres the pictures produced and distributed by First National, but also they each obtained the right to sub-franchise other exhibitors in their respective territories. In a short time there were some 3500 franchise holders, representing as many or more theatres.

6. First National soon began to negotiate for the services of well-known stars and directors in the employ of other producers, including Paramount, and the members of First National began to refuse to exhibit Paramount Films.

Such well known stars as Mary Pickford and Norma Talmadge went over to the First National Group.

7. Many of the theatres owned by members of First National had, for a long time prior to 1918, exhibited Paramount pictures. The formation and growth of First National gradually cut down the number of Paramount pictures exhibited in the theatres of the First National group. By 1919 Paramount faced a situation where a group of owners of many of the best theatres in the large cities, many of whom had been its customers in the past, had combined together for co-operative buying and had expanded into a strong organization which distributed its own pictures and threatened to supply its members with enough pictures to permit them to operate without using any pictures of other producers, including Paramount.

8. In these circumstances Paramount determined to acquire interests in theatres of its own so that it might assure itself of outlets for Paramount productions. Prior to the fall of 1917 Paramount had no theatre interests. Between 1917 and 1919 it acquired an interest in two theatres in New York City as show windows, to replace the [fol. 3841] Strand Theatre which had gone over to the First National Group. During that year in conjunction with its representative in the South, it formed Southern Enterprises, Inc., which acquired various theatres in the South. At about the same time Paramount acquired a 50% interest in the Black chain of theatres in New England.

9. In January, 1932, Paramount went into equity receivership in the United States District Court for the Southern District of New York. It stayed in equity receivership until March, 1933, when it went into voluntary bankruptcy. It remained in bankruptcy until June, 1934, when upon passage of Section 77B of the Bankruptcy Law, it petitioned for reorganization. It was finally reorganized under its present name in June, 1935. During these years various companies operating theatres in which Paramount was interested were themselves the subject of bankruptcy or receivership proceedings.

10. Some of the theatre interests which Paramount held at the time of the trial of this action had been acquired and were wholly owned by it either directly or indirectly through subsidiary companies prior to its bankruptcy and reorgan-

ization. In the course of its reorganization, some of its partly owned theatre interests were created, i. e., in some instances the plan of reorganization approved by this court provided for the sale or other disposition by Paramount of a partial interest (sometimes amounting to 50%, sometimes more and sometimes less) in theretofore wholly owned theatre operating companies, or companies holding legal or equitable interests in theatres or theatre operating companies. The result was the creation of many of Paramount's present partly owned theatre interests.

11. In the course of the reorganization proceedings Paramount lost its interests in some theatres and also changed its relationship with respect to interests in some of its [fol. 3842] theatre operating companies. The effect of these proceedings and the policy of decentralization inaugurated in the course thereof, was that in some instances Paramount disposed of a partial interest in companies theretofore wholly owned.

12. Loew's Incorporated is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1540 Broadway, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

13. Radio-Keith-Orpheum Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries.

14. RKO Radio Pictures, Inc., a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the production and distribution branch of the industry.

15. Keith-Albee-Orpheum Corporation was a corporation organized and existing under the laws of the State of Dela-

ware, with a place of business at 1270 Sixth Avenue, New York, New York, and was engaged in the business of exhibiting motion pictures prior to its dissolution on September 29, 1944. Approximately 99% of its common stock and 33% of its preferred stock were held by by Radio-Keith-Orpheum Corporation.

[fol. 3843] 16. RKO Proctor Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation is a corporation organized and existing under the laws of the State of New York, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures.

17. RKO Midwest Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Ohio, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures.

18. RKO was organized in 1928 by Radio Corporation of America largely for the purpose of obtaining an effective means of developing the use of its motion picture sound recording and reproduction devices in the motion picture production and exhibition fields.

19. At the time of its organization, RKO secured production and distribution facilities by merger with a small company, FBO Productions, Inc., which had limited production facilities and a national distributing organization. RKO invested substantial sums to modernize these facilities.

20. The formation of RKO introduced a new and substantial competitive factor in the production and distribution of motion pictures.

21. During its initial organizational period, RKO acquired interests in a number of companies operating circuits of vaudeville theatres.

22. RKO went into receivership in 1933 and continued in receivership and reorganization until 1940. At the time of its receivership RKO operated considerably more theatres [fol. 3844] than its present total of 106. During the receivership it lost 57 theatres.

23. The organization of RKO did increase competition in each of the three branches of the industry.

24. Warner Bros. Pictures, Inc. is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 321 West 44th Street, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

25. On April 4, 1923, the four Warner brothers, Harry M., Jack L., Albert, and Sam, transferred their business of production and distribution of motion pictures to a corporation known as Warner Bros. Pictures, Inc. (hereinafter referred to as Warner).

26. Beginning in 1925, Warner began the work of developing sound pictures under license and agreements from Western Electric, culminating in the production of such sound pictures as "The Jazz Singer", starring Al Jolson, in October, 1927, and the first 100% talking picture "The Lights of New York" in the summer of 1928.

27. The Stanley Company of America had in 1928 and for a year prior thereto about 250 theatres situated principally in and around Pennsylvania and New Jersey.

28. Negotiations were begun with the view of exchanging stock of Warner for the stock of Stanley Company of America. This transaction was consummated late in 1928.

29. With the acquisition of the stock of Stanley Company of America, Warner acquired 250 theatres which could be immediately equipped with sound installation.

[fol. 3845] 30. In the year and nine months immediately following the acquisition of the stock of Stanley Company of America Warner secured in a similar fashion several other circuits of theatres owning theatres in the same general locality and a smaller number of theatres scattered in various other parts of the country.

31. In 1931 Warner had an interest in 591 theatres, the largest number of theatres in which Warner has ever had an interest.

32. Today, the Warner companies have an interest in 547 theatres—a net reduction of 44 from its peak holdings of 591 in 1931.

33. First National Pictures, Inc., a corporation engaged in the production and distribution of silent motion pictures had been organized as far back as 1917 by approximately 24 exhibitors on a cooperative basis for the basis of acquiring film of first quality for exhibition in their own theatres, as well as for distribution by them for other theatres in the respective territories in which they operated.

34. In 1928 Stanley Company of America owned ⅓ of the stock of First National Pictures, Inc., all the stock of First National Pictures, Inc. being subject to a voting trust.

35. Warner acquired as part of the Stanley Company of America transaction in 1928, ⅓ of the stock of First National Pictures, Inc.

36. At or about the time of the acquisition of the Stanley Company of America stock, or shortly thereafter, Warner purchased another ⅓ of the stock of First National Pictures, Inc. from other First National Pictures, Inc. stockholders.

[fol. 3846] 37. Subsequently, in 1929, Warner acquired the remaining ⅓ of the stock of First National Pictures, Inc. from defendant, Twentieth Century-Fox.

38. Vitagraph, Inc., a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and is engaged in the business of distributing motion pictures. On July 20, 1944, its name was changed to Warner Bros. Pictures Distributing Corporation.

39. Warner Bros. Circuit Management Corporation, a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and, among other things, acts as booking agent for the exhibition interests of the said Warner Bros. Pictures, Inc.

40. Twentieth Century-Fox Film Corporation is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 444 West 56th Street, New York, New York, and is engaged in the business of producing, distributing, and exhibiting mo-

tion pictures, either directly or through subsidiary or Associated companies, in various parts of the United States and in foreign countries.

41. Twentieth Century-Fox produces its features in its own studio in Los Angeles, California, distributes them in this country through thirty-one branches or exchanges which it operates in the principal centers of population, and licenses its features for exhibition in its own and other theatres.

42. Twentieth Century-Fox, acquired its initial interest in theatres through the purchase of stock in corporations then engaged in operating theatres. Since such original [fol. 3847] acquisition, it has acquired additional interests in theatres, some of which were acquired in competition with other defendants and with independent circuits and some of which are new theatres constructed by it.

43. National Theatres Corporation is owned and controlled by Twentieth Century-Fox Film Corporation, and is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 2854 Hudson Boulevard, Jersey City, New Jersey, and is a holding company for the theatre interests of the said Twentieth Century-Fox Film Corporation.

44. Columbia Pictures Corporation is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 729 Seventh Avenue, New York, and is engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

45. Screen Gems, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of California, with a place of business at 700 Santa Monica Boulevard, Hollywood, California, and is engaged in the business of producing motion pictures.

46. Columbia Pictures of Louisiana, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of Louisiana, with a place of business at 150 South Liberty

Street, New Orleans, Louisiana, and is engaged in the business of distributing motion pictures.

47. Universal Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1250 Sixth Avenue, New [fol. 3848] York, New York, and is engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries On May 25, 1943, its name was changed to Universal Pictures Company, Inc., when a subsidiary of the same name was merged into it, but Universal Corporation was the surviving corporation.

48. The corporation named in the complaint as Universal Pictures Company, Inc., was a subsidiary corporation controlled by Universal Corporation, which was engaged in the business of producing motion pictures, prior to its merger into Universal Corporation on May 25, 1943.

49. Universal Film Exchanges, Inc., a wholly owned subsidiary of Universal Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of distributing motion pictures.

50. The Universal group of defendants at the time of the trial consisted of the following corporations: (1) Universal Pictures Company, Inc. (hereinafter sometimes called Universal Pictures), a Delaware Corporation with its principal office in New York, N. Y., engaged in the business of producing motion pictures and distributing the same through wholly-owned subsidiaries; (2) Universal Film Exchanges, Inc. (hereinafter sometimes called Universal Film Exchanges), a Delaware corporation, with its principal office in New York, N. Y., engaged in the business of distributing motion pictures throughout the United States (except for the Metropolitan District of New York City), a wholly-owned subsidiary of Universal Pictures; (3) Big U Film Exchange, Inc. (hereinafter sometimes called Big U), a New York corporation, with its principal office in New York, N. Y., engaged in the business of distributing motion pictures throughout the Metropolitan District of New York [fol. 3849] City, a wholly-owned subsidiary of Universal

Pictures. The term "Universal" as used herein means any or all of the Universal defendants.

51. Prior to May 25, 1943, the name of Universal Pictures Company, Inc. was Universal Corporation, incorporated in Delaware in 1936. It owned approximately 92% of the outstanding common stock of a Delaware corporation which was incorporated in the year 1925 and was also known as Universal Pictures Company, Inc. Said corporation last-named had its principal office in New York, N. Y., and was engaged in the business of producing motion pictures and distributing the same through its subsidiaries. It owned all of the outstanding stock of Universal Film Exchange Inc. and 20% of the outstanding common stock of Big U Film Exchange Inc. The other 80% of said stock was owned by Universay Corporation. On May 25, 1943, Universal Pictures Company, Inc. (Delaware, 1925) was merged into Universal Corporation (the surviving corporation), and the name of the surviving corporation was changed to Universal Pictures Company, Inc.

52. Big U Film Exchange, Inc., a wholly owned subsidiary of Universal Corporation, is a corporation organized and existing under the laws of the State of New York, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of distributing motion pictures.

53. United Artists Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 729 Seventh Avenue, New York, New York, and is engaged in distribution of motion pictures in various parts of the United States and in foreign countries.

54. During the entire period in question United Artists Corporation distributed photoplays in the United States of [fol. 3850] America that were produced by David O. Selznick, Mary Pickford, Charles Chaplin, Hunt Stromberg, William Cagney, Bing Crosby, Edward Small, Sol Lesser, Lester Cowan, Jack Skirball, Benedict Bogeaus, Seymour Nebenzal, Jules Levey, David Loew, Arnold Pressburger, Charles R. Rogers, Andrew Stone, Constance Bennet, Howard Hughes, Preston Sturgis, J. Arthur Rank, Edward Golden, or corporations with which the aforesaid individuals were associated and other independent producers.

55. United Artists Corporation maintains 26 branches or exchanges located throughout the United States, and through these facilities it distributes and has distributed all of the product handled by it during the period in question.

56. Paramount Pictures, Inc., Loew's Incorporated; Radio-Keith-Orpheum Corporation; Warner Bros. Pictures, Inc.; and Twentieth Century-Fox Film Corporation and their respective distribution and exhibition subsidiaries are the five major defendants.

57. As between the eight defendants, Paramount, Loew's, Fox, RKO, Warner, Columbia, United Artists and Universal, there are no officers or directors in common, and none of said defendants owns any controlling stock or other securities in any other of said defendants.

58. Neither of the defendants Columbia, Universal and United Artists owns any theatres.

59. There exists active competition among the defendants and others in the production of motion pictures.

60. None of the defendants has monopolized or attempted to monopolize or contracted or combined or conspired to monopolize or to restrain trade or commerce in any part of the business of producing motion pictures.

[fol. 3851] 61. In the distribution of feature motion pictures no film is sold to the exhibitor; the right to exhibit under copyright is licensed.

62. In licensing features, each of the distributor defendants has agreed with each of its respective licensees that the licensee should charge no less than a stated admission price during the exhibition of the feature licensed.

63. The minimum admission prices included in licenses of each of the eight distributor-defendants for any given theatre are in general uniform, being the usual admission prices currently charged by the exhibitor.

64. The defendants' licenses are in effect price-fixing arrangements among all of the distributor-defendants, as well as between such defendants individually and their various exhibitors. Thus there was a general arrangement of fixing prices in which both the distributors and exhibitors were involved. The licenses required existing admission

price schedules to be maintained under severe penalties for infraction. In the case of such exceptional features as "Gone With The Wind", "For Whom The Bell Tolls", "Wilson", and "Song of Bernadette", licensed for exhibition prior to general release and as to which the distributors were not satisfied with current prices, they would refuse to grant licenses unless the prices were raised.

65. The defendants granting film licenses have agreed with their licensees to a system which determines minimum admission prices in all theatres where feature motion pictures licensed by them are exhibited. In this way are controlled the prices to be charged for most of the feature motion pictures exhibited either by the defendants or by independents within the United States.

66. All of the five major defendants have a definite interest in keeping up prices in any given territory in which [fol. 3852] they own theatres and this interest they were safeguarding by fixing minimum prices in their licenses when distributing films to exhibitors in those areas. Even if the licenses were at flat rate, a failure to require their licensees to maintain fixed prices would leave them free for lowering the current charge to decrease through competition the income to the licensor on theatres in the neighborhood. The whole system presupposed a fixing of prices by all parties concerned in all competitive areas. There exists great similarity, and in many cases identity, in the minimum prices fixed for the same theatres in the licenses of all of the defendants.

67. The major defendants made operating agreements as exhibitors with each other and with independent exhibitors in which joint operation of certain theatres covered by the agreements is provided and minimum admission prices to be charged are either stated therein or are to be jointly determined by other means. These agreements show the express intent of the major defendants to maintain prices at artificial levels.

68. Certain master agreements and franchises between various of the defendants in their capacities as distributors and various of the defendants in their capacities as exhibitors stipulate minimum admission prices often for dozens

of theatres owned by an exhibitor-defendant in a particular area in the United States.

69. Licenses granted by one defendant to another disclose the same inter-relationship among the defendants. Each of the five major defendants as an exhibitor has been licensed by the other seven defendants as distributors to exhibit the pictures of the latter at specified minimum admission prices. RKO; Loew's, Warner, Paramount, and Fox, in granting and accepting licenses with minimum admission prices specified, have among themselves engaged in a national system to fix prices, and Columbia, Universal, [fol. 3853] and United Artists, in requiring the maintenance of minimum admission prices in their licenses granted to these exhibitor-defendants, have participated in that system.

70. The distributor-defendants have acquiesced in the establishment of a price-fixing system and have conspired with one another to maintain prices.

71. In agreeing to maintain a stipulated minimum admission price, each exhibitor thereby consents to the minimum price level at which it will compete against other licensees of the same distributor whether they exhibit on the same run or not. The total effect is that through the separate contracts between the distributor and its licensees a price structure is erected which regulates the licensees' ability to compete against one another in admission prices. Each licensee knows from the general uniformity of admission price practices that other licensees having theatres suitable for exhibition of a distributor's feature in the particular competitive area will also be restricted as to maintenance of minimum admission prices, and this acquiescence of the exhibitors in the distributor's control of price competition renders the whole a conspiracy between each distributor and its licensees. An effective system of price control in which the distributor and its licensees knowingly take part by entering into price-restricting contracts is thereby erected.

72. The differentials in admission price set by a distributor in licensing a particular feature in theatres exhibiting on different runs in the same competitive area are calculated to encourage as many patrons as possible to see the picture in the prior-run theatre where they will pay higher

prices than in the subsequent runs. The reason for this is that if 10,000 people of a city's population are ultimately to see the feature—no matter on what run—the gross revenue to be realized from their patronage is increased rela-[fol. 3854] tively to the increase in numbers seeing it in the higher-priced prior-run theatres. In effect, the distributor, by the fixing of minimum admission prices, attempts to give the prior-run exhibitors as near a monopoly of the patronage as possible.

73. Among the provisions common to the licensing contracts of all the distributor-defendants are those by which the licensor agrees not to exhibit or grant a license to exhibit a certain feature motion picture before a specified number of days after the last date of the exhibition therein licensed. This so-called period of "clearance" or "protection" is stated in the various licenses in differing ways; in terms of a given period between designated runs-in terms of admission prices charged by competing theatres; in terms of a given period of clearance over specifically named theatres; in terms of so many days' clearance over specified areas or towns; in terms of clearances as fixed by other distributors; or in terms of combinations of these formulae.

74. The cost of each black and white print is from $150 to $300, and of a technicolor print is from $600 to $800. Many of the bookings are for less than the cost of the print so that exhibitions would be confined to the larger high-priced theatres unless a system of successive runs with a reasonable protection for the earlier runs is adopted in the way of clearance.

75. Without regard to period of clearance, licensing features for exhibition on different successive dates is essential in the distribution of feature motion pictures.

76. Either a license for successive dates, or one providing for clearance, permits the public to see the picture in a later exhibiting theatre at lower than prior rates.

77. A grant of clearance, when not accompanied by a fixing of minimum admission prices or not unduly extended as to area or duration affords a fair protection of the interest [fol. 3855] of the licensor in the rental to be derived from the exhibition of the feature licensed, without unreasonably interfering with the interest of the public.

78. Clearance, reasonable as to time and area, is essential in the distribution and exhibition of motion pictures. The practice is of proved utility in the motion picture industry and necessary for the reasonable conduct of the business.

79. The major defendants have acquiesced in and forwarded a uniform system of clearances and in numerous instances have maintained unreasonable clearances to the prejudice of independents.

80. Some licenses granted clearance to sell to all theatres which the exhibitor party to the contract might thereafter own, lease, control, manage, or operate against all theatres in the immediate vicinity of the exhibitor's theatre thereafter erected or opened. The purpose of this type of clearance agreements was to fix the run and clearance status of any theatre thereafter opened not on the basis of its appointments, size, location, and other competitive features normally entering into such determination, but rather upon the sole basis of whether it were operated by the exhibitor party to the agreement.

81. The distributor-defendants have acted in concert in the formation of a uniform system of clearance for the theatres to which they license their films and the exhibitor-defendants have assisted in creating and have acquiesced in this system.

82. The defendants have acted in concert in their grant of run and clearance.

83. Clearances are given to protect a particular run against a subsequent run and the practice of clearance is so [fol. 3856] closely allied with that of run as to make findings on the one applicable to the other.

84. Both independent distributors and exhibitors, when attempting to bargain with the defendants, have been met by a fixed scale of clearances, runs, and admission prices to which they have been obliged to conform if they wished to get their pictures shown upon satisfactory runs or were to compete in exhibition either with the defendants' theatre or theatres to which the latter had licensed their pictures.

85. Competition can be introduced into the present system of fixed admission prices, clearances, and runs, by requiring a defendant-distributor when licensing its features

to grant the license for each run at a reasonable clearance (if clearance is involved) to the highest bidder, if such bidder is responsible and has a theatre of a size, location, and equipment adequate to yield a reasonable return to the licensor. In other words, if two theatres are bidding and are fairly comparable, the one offering the best terms shall receive the license. Thus, price fixing among the licensors or between a licensor and its licensees as well as the non-competitive clearance system may be terminated.

86. Formula deals have been entered into by Paramount and by RKO with independent and affilicated circuits. The circuit may allocate playing time and film rentals among the various theatres as it sees fit. Arrangements whereby all the theatres of a circuit are included in a single agreement, and no opportunity is afforded for other theatre owners to bid for the feature in their several areas, seriously and unreasonably restrain competition.

87. Loew's is not, and never has been, a party either as a distributor or as an exhibitor, to any "formula deal" license agreements.

[fol. 3857] 88. Master agreements which cover exhibition in two or more theatres in a particular circuit and allow the exhibitor to allocate the film rental paid among the theatres as it sees fit and also to exhibit the features upon such playing time as it deems best and leaves other terms to the circuit's discretion, have been entered into by the distributor defendants and unreasonably restrain trade.

89. Franchises have been entered into by the distributor defendants, and unreasonably restrain trade, because they cover too long a period (more than one season), and also because they embrace all the features released by a given distributor.

90. Loew's today has outstanding no franchise agreements for any theatre in which it does not have an interest, and Loew's is not currently granting franchises. During its entire history Loew's, as a distributor, granted a total of 213 franchises, of which 154 were to independent theatres and only 59 to those in which any other producer-exhibitor had an interest.

91. Twentieth Century-Fox has not granted any franchises since June 6, 1940. In 1938-39, the motion picture season in

which Twentieth Century-Fox had the greatest number of franchises outstanding, there were 400. Of these, 361 were with independent exhibitors.

92. During the period in question Universal entered into franchise agreements with 727 independent exhibitors and 43 affiliated exhibitors.

93. Block-booking, when the license of any feature is conditioned upon taking of other features, is a system which prevents competitors from bidding for single features on their individual merits.

94. For many years the distributor defendants, except United Artists Corporation, licensed their films in "blocks", [fol. 3858] or indivisible groups, before they had been actually produced. In such cases the only knowledge prospective exhibitors had of the films which they had contracted for was from a description of each picture by title, plot and players. In many cases licenses for all the films had to be accepted in order to obtain any, though sometimes the exhibitor was given a right of subsequent cancellation for a certain number of pictures. Because of complaints of block booking and blind-selling based upon the supposed unfairness of contracts which often includes pictures the inferior quality of which could not be known, Sections III and IV of the consent decree required the five consenting distributors to trade-show their films before offering them for license and limited the number which might be included in any contract to five. More than one block of five, however, could be licensed where the contents of any had been trade-shown. While this restriction in the consent decree has now ceased by time limitation, the consenting distributors have continued to observed the restriction. The non-assenting distributors have retained up to the present time their previous methods of licensing in blocks, but have allowed their customers considerable freedom to cancel the license as to a percentage of the pictures contracted for.

95. United Artists did not at any time license the exhibition of its pictures in blocks but on the contrary licensed the exhibition of its pictures separately and individually.

96. During the period in question United Artists did not condition the licensing of any photoplay in any exhibitor's theatre upon that exhibitor's agreement to license other United photoplays for exhibition in said theatre.

97. Blind-selling is a practice whereby a distributor licenses a feature before the exhibitor is afforded an opportunity to view it.

98. Since the consent decree of November 20, 1940, the five major defendants have given each exhibitor, whether a defendant or independent, an opportunity at trade shows [fol. 3859] to view each feature before licensing it. In general, trade shows, which are designed to prevent blind-selling, are poorly attended by exhibitors.

99. During the 1943-44 season, the number of features distributed by eight distributor-defendants and the three other national distributors were as follows:

Distributor-defendants	No. of Films	Percentages of Total With "Westerns" Included	With "Westerns" Excluded
Fox	33	8.31%	9.85%
Loew's	33	8.31%	9.85%
Paramount	31	7.81%	9.25%
RKO	38	9.57%	11.34%
Warner	19	4.79%	5.67%
Columbia	41	10.32%	12.24%
United Artists	16	4.04%	4.78%
Universal	49	12.34%	14.63%
Sub-total	260		
Other National Distributors			
Republic (29 features (30 "Westerns"		14.86%	8.66%
Monogram (26 features (16 "Westerns"		10.58%	7.76%
PRC (20 features (16 "Westerns"		9.07%	5.97%
		100%	100%
Sub-Total 137	397		
Total without Westerns	335		

100. The percentage of features on the market which any of the five major defendants could play in its own theatre would be relatively small and in no-wise approximates a monopoly of film exhibition.

[fol. 3860] 101. Continuously since its organization RKO has distributed features for independent producers. The particular independent producers whose features have been distributed by RKO have varied from time to time. In the nine seasons ending 1943-44, 19.8% of the features distributed by RKO were independently produced, and 28.4% of RKO's gross receipts from domestic licenses of features was derived from such independently produced features.

102. It would be financially impossible for RKO to operate its theatres on features distributed by RKO alone.

103. Twentieth Century Fox produced less than 9 per cent of the total number of features nationally distributed in the United States during each year between 1936-37 and 1944-45.

104. Universal has customarily produced at its studios at Universal City, California, during each theatrical year (commencing on or about September 1st) between 45 and 50 feature-length motion picture photoplays, seven so-called Westerns, four Serials, 15 two-reel subjects, 30 single-reel subjects and 104 newsreels.

105. Said motion pictures were distributed by Universal and licensed for exhibition by motion picture theatres throughout the United States by means of a system of 31 exchanges located in various States in the United States, from the East Coast to the West Coast and from Canada to the Southern boundary. Universal also maintained a Home Office in the City of New York.

106. In marketing its motion pictures, Universal's usual and customary practice was to offer to license to exhibitors, by title and description as aforesaid, its entire line of pictures, consisting of feature-length motion picture photoplays, Westerns, short-subjects (consisting of serials and two-reel and one-reel pictures) and newsreels. In this way approximately 50 feature-length motion picture photoplays, a group of Westerns, short-subjects, two so-called "Special" [fol. 3861] photoplays, three features produced by inde-

pendent producers, and newsreels, were offered to exhibitors by Universal each year.

106A. During recent years, in excess of 600 feature-length motion-picture photoplays were released each year in the United States, exclusive of foreign-made films. Universal releases of feature-length photoplays, including Westerns and so-called Marquee pictures, during said period, equalled approximately 8% of the total number of feature-length photoplays released in the United States each year.

107. During the period in question, United Artists Corporation distributed between 20 to 26 pictures a year when the corporation had a good year and has handled as low as 4 in distribution in a releasing season.

108. At no time during the period in question did United Artists distribute more than 5% of the feature photoplays American made and distributed in the United States of America and generally distributed less than 5% of such releases.

109. That in each distribution agreement with each producer using the facilities of United Artists for distribution among other things there appears substantially the following language:

"United agrees to devote its best efforts to the proper marketing and disposition of the motion pictures delivered hereunder in all the territories licensed hereunder wherein it customarily markets motion pictures, and to make such marketing as complete and efficient as practicable, so that the gross returns from the marketing of the product hereunder shall be as large as possible and at the same time consistent with the sound business policy of United.

"United will use its best efforts to procure prices, license fees and rentals in a fair and open market reasonably satisfactory to the Producer.

[fol. 3862] "Exhibition Contracts: The exhibition contracts for each of such motion pictures delivered hereunder shall be made separate and apart from the exhibition contract of any other motion picture marketed by United, with the exception that in territories other than the United States where it is customary to

include more than one motion picture on a contract, the Producer authorizes United to market its product in accordance with that custom. In no event, however, shall any motion picture of the Producer be used to enforce the licensing, leasing or other disposition of any other motion picture marketed by United, and in such territory where it is the custom to include on one contract more than one motion picture United shall set out the respective license fees for each motion picture after the name of such motion picture.

"United agrees upon the written direction of Producer that United shall market wherever permissible the motion pictures designed by the Producer or its agent as a unit, and in such case such unit shall be licensed separate and apart from any other motion picture marketed by United, with the exception that in those countries where it is the custom to market all of the motion pictures on one contract, United shall adhere to the prevailing custom.

"The Producer shall have the right to designate a representative for the territories hereinafter specified. The Producer shall bear all the expenses of such representative. Such representative must have an office in the central location of such territory, and if so United shall submit to such representative for his approval or rejection all proposed written contracts with exhibitors for that territory. The territories and their central location are as follows:

Territory	Central Location
United States and Canada	New York
British Isles	London
Australia	Sydney

"Producer agrees that such submission shall not be necessary if made impractical by conditions beyond the control of United, such as conditions arising out of war.

[fol. 3863] "If the Producer has designated such a representative for any such territory, United shall submit for his approval or rejection each proposed written contract for the distributing, exhibiting or marketing of such Producer's motion pictures or any of

them in the territory in which such representative is acting. No such contract shall be accepted by United if within three (3) succeeding business days following the date on which said proposed written contract has been received by the Producer or its representative the Producer or its representative shall return such proposed contract to United with its rejection noted thereon or appended thereto.

"Should the Producer or its representative reject any such proposed contract the Producer or its representative shall have fourteen (14) days from the date of rejection in which to obtain a more favorable contract. Should the Producer or its representative fail so to do the original contract shall ipso facto be deemed approved unless the Producer or its representative shall have designated its original rejection as final. No proposed contract on which the rejection has been designated as final shall be entered into by United.

"Should the Producer or its representative at any time agree in advance with United upon the rental terms or license fees for the distribution, exhibition or marketing of any motion picture in any specified theatre or situation, United shall not be obligated to submit the contract containing the terms so agreed upon to the Producer or its representative for approval."

110. Various contract provisions by which discriminations against small independent exhibitors and in favor of the large affiliated and unaffiliated circuits were accomplished are: suspending the terms of a given contract, if a circuit theatre remains closed for more than eight weeks, and reinstating it without liability upon reopening; allowing large privileges in the selection and elimination of films; allowing deductions in film rentals if double bills are played; granting moveovers and extended runs; granting road-[fol. 3864] show privileges; allowing overage and underage; granting unlimited playing time; excluding foreign pictures and those of independent producers; granting rights to question the classification of features for rental purposes. These provisions are found most frequently in franchises and master agreements, which are made with the larger circuits of affiliated and unaffiliated theatres. Small

independents are usually licensed, however, upon the standard forms of contract, which do not include them. The competitive advantages of these provisions are so great that their inclusion in contracts with the larger circuits constitutes an unreasonable discrimination against small competitors.

111. The discriminations referred to in Finding 110 would appear to be impossible under a system where the exhibitors competing for a license to exhibit a given feature on a given run do so on a parity since the same offer must be made to all pro-pective exhibitors in each competitive area.

112. Agreements were made by the exhibitor-defendants with each other and their affiliates by which given theatres of two or more exhibitors, normally in competition with each other, were operated as a unit, or most of their business policies collectively determined by a joint committee or by one of the exhibitors, and by which profits of the 'pooled'' theatres were divided among the exhibitors in or owners of such theatres according to pre-agreed percentages or otherwise. Some of the agreements provide that the parties thereto may not acquire other theatres in the competitive vicinity without first offering them for inclusion in the "pool". The result is to eliminate competition *pro tanto* both in exhibition and in distribution of features which flow almost automatically to the theatres in the earnings of which they have a joint interest.

113. Other forms of operating agreements are between major defendants and independent exhibitors rather than between major defendants. The effect is to ally two or more theatres of different ownership into a coalition for the nulli-[fol. 3865] fication of competition between them and for their more effective competition against theatres not members of the "pool".

114. In certain other cases the operating agreements are accomplished by leases of theatres, the rentals being determined by a stipulated percentage of profits earned by the "pooled" theatres. This is but another means of carrying out the restraints found above.

115. Many theatres, or the corporations owning them, are held jointly by one or more of the exhibitor-defendants,

together with another exhibitor-defendant, in some cases in conjunction with independents. These joint interests enable the major defendants to operate theatres collectively, rather than competitively. When a defendant or an independent owns an interest of five per cent or less, such an interest is *de minimis* and only to be treated as inconsequential investment in exhibition.

116. When theatres are jointly owned by a major defendant and another party, it is evident that both joint owners wish to participate and indeed are directly or indirectly participating in the business of exhibiting motion pictures. The major defendant thereby eliminates putative competition between itself and the other joint owner, who otherwise would be in a position to operate theatres independently.

117. Such joint interest as those described above in findings 112 through 116 exist in a great number of theatres, a summary of which is set forth in the following tabulation taken from RKO's Exhibit 11:

Theatres jointly owned with independents:

Paramount	993
Warner	20
Fox	66
RKO	187
Loew's	21

[fol. 3866] *Theatres jointly owned by two defendants:*

Paramount-Fox	6
Paramount-Loew's	14
Paramount-Warner	25
Paramount-RKO	150
Loew's RKO	3
Loew's Warner	5
Fox-RKO	1
Warner-RKO	10
Total	1,501 Theatres

Of the above theatres jointly owned with independents, the following number will not be affected by the decree,

since the defendant or co-owning independent owns less than a 5% interest.

Paramount	177
RKO	32
Total	209 Theatres
Total affected by the decree according to RKO's Exhibit 11	1,292 Theatres

118. In the year 1945 there were about 18,076 motion pictures theatres in the United States, of which the five major defendants had interests in 3,137, or 17.35 percent. Of the latter, Paramount or its subsidiaries owned independently of the other defendants 1,395—a little less than half, or about 7.72 percent; Warner 501, or about 2.77 percent; Loew's 135, or about .74 percent; Fox 636, or about 3.52 percent; and RKO 109, or about .60 percent. There were 361 theatres, or about 2.00 percent, in which two or more of these defendants had joint interests, whether held [fol. 3867] directly or indirectly through stock ownership in the same corporation or through a lease or operating agreement. This tabulation excludes theatres connected with one or more of the defendants through film-buying or management contracts or through corporations in which a defendant owned an indirect minority stock interest. It includes all theatres in which each defendant otherwise owned a direct or indirect interest of any amount.

119. The present theatre holdings of the five defendant-exhibitors Paramount, Loew's, Fox, RKO and Warner, aggregate little more than one-sixth of all the theatres in the United States, and by such theatre holdings alone the defendants do not and cannot collectively or individually, have a monopoly of exhibition.

120. On January 1, 1935, Loew's operated in the United States, 126 theatres. The first-run theatres, which are engaged to a large extent in exhibiting Loew's own product, Metro pictures, serve as "show-cases" for those pictures in the areas where the theatres are located.

121. The formation of RKO resulted in the conversion of vaudeville theatres acquired by it into motion picture

theatres and thereby introduced new and substantial competition into the exhibition field in the cities in which each of these theatres was located.

122. Ownership and operation by RKO of theatres in certain principal cities of the United States enables RKO through the utilization of the facilities of such theatres to plan and direct the first exploitation of the features which it distributes in such areas in a more effective manner than is possible in areas where RKO does not operate theatres.

123. The successful exhibition of a feature in its initial runs in any area is widely publicized and closely observed by subsequent run exhibitors in that area and success in ex- [fol. 3868] ploiting a picture in such exhibitions produces increased revenue both for the distributor and for subsequent run exhibitors.

124. Each of the five major defendants is able to coordinate the initial exhibition of its features in its theatres with an extensive and accurately timed national advertising campaign.

125. Twentieth Century-Fox is interested in theatres in only 16 of the 92 cities having a population of over 100,000. In 12 of these 16 cities features of one or more defendants is licensed to independent first run exhibitors competing with Twentieth Century-Fox (New York, Seattle, Denver, Portland, Oakland, San Diego, Long Beach, Los Angeles, San Francisco, Spokane, Sacramento, and Kansas City, Kansas) as well as to other defendants having theatres in some of these cities. In three of the remaining four cities there is also first run competition from others of the defendants.

126. The 17.35% of theatres which comprise the five circuits of the major defendants pay from 35 to 54% of the total domestic film rental respectively received by the eight distributor defendants and 45% of the total domestic film rental received by all of said distributor-defendants. The five largest unaffiliated circuits together pay less than 5% of such rental.

127. The major defendants, as distributors, during the 1943-44 season, received from 71 to 81% of the film rental that was paid to all distributors by exhibitors affiliated with the five major defendants. The minor defendants received

from 26 to 15% of such rental and the independent distributors from 2½ to 4½% of such rental.

128. During the 1943-44 season the eight distributor defendants received 45.2% of the total feature film rental, re-
[fol. 3869] ceived by them, from theatres affiliated with the five major defendants; and 54.8% of such rental from other exhibitors.

129. In some situations where Paramount had theatre interests, other defendant distributors licensed their features to competing theatres and not to the Paramount theatres, and in some cases the operating companies in which Paramount was interested were not able to obtain the right to exhibit the features of some of the other defendant distributors.

130. Paramount features are licensed for exhibition in from 8,000 to 14,500 theatres in the United States annually. The number of licenses each year varies from feature to feature and from year to year.

131. In 21 of the 36 out of the 92 cities where Loew's operates theatres none of the other four producer-exhibitors licensed its features in the 1943-44 season for first-run exhibition in a Loew's theatre, to the extent of more than three features, the Loew's theatres' first-run exhibition being otherwise limited to its own features and those of non theatre-owning producers.

132. Over the 10 years from 1935 to 1945, the total number of features licensed by the other four theatre-owning distributors to Loew's first-run houses, decreased from 1382 to 998 and the features of non theatre-owning distributors, increased from 1201 to 1879.

133. In 1935, the other four theatre-owning distributors earned $2,611,986 from Loew's theatres and the non theatre-owning distributors earned $2,205,330 ($406,656 less). In 1944, the non theatre-owning distributors earned $5,261,116 in Loew's theatres, which was $419,477 more than the $4,841,639, earned in Loew's theatres in that year by the four other theatre-owning distributors.

[fol. 3870] 134. In 1944, the percentage of the total film rental paid by Loew's theatres to each of the non theatre-owning distributors, Columbia (8.8%), United Artists

(8.3%) and Universal (7.4%), was higher than that paid to each of three producer-exhibitors, RKO (2.1%), Warner Bros. (2.1%) and Twentieth Century-Fox (6.1%).

135. In the year 1944, of the total film rental paid by Loew's theatres, 47.9% was to Loew's itself for the exhibition of Loew's pictures, and 27.1% was to non theatre-owning distributors. Thus a total of 75% of all film rentals paid by Loew's theatres went to persons other than the four other defendant-producer-exhibitors.

136. During the 1943-44 season RKO received 56.9% of its total license fees from independent theatres, 14.1% from its own theatres, and (in the aggregate) 29% from theatres affiliated with other defendants.

137. In the 1943-44 season, of the total number of exhibitions of features in first-run and metropolitan circuit run-theatres operated by RKO, 23.1% were exhibitions of features distributed by RKO, 29.6% were exhibitions of features distributed by other theatre-owning distributors, and 47.3% were exhibitions of features distributed by non-theatre-owning distributors.

138. In the 4 pre-war seasons of 1937-1940, Warner derived about 61 6/10% of its domestic gross rentals from theatres not affiliated with any of the defendants, about 14% from theatres in which it had an interest, about 4% from theatres in which Twentieth Century-Fox had an interest, about 6% from theatres in which RKO had an interest, and less than 1% from theatres in which Loew had an interest.

139. Of its total domestic and foreign rentals Warner received about 30% from abroad, about 43% from theatres in which none of the defendants had an interest, about [fol. 3871] 10% from Warner's own American theatres, and the balance, about 16% from American theatres in which one or more of the defendants had an interest.

140. Not a single one of the Loew first run theatres in the 39 of the 92 largest cities where Loew operates or has an interest in first run theatres licensed a Warner feature for exhibition in the 1943-44 season. In the same season the Warner theatres regularly exhibited the Loew features in many of the 28 of the 92 largest cities where Warner operated or had an interest in first run theatres.

141. The dollars paid by Warner to each of the other defendants and by each of the other defendants to Warner show no uniformity of pattern from company to company from year to year.

142. There were marked variances from year to year in the sums paid as rental by the theatres in which Warner had an interest to United Artists, Universal, and Columbia, the non-theatre owning defendants.

143. Between 1937 and 1944 the theatres in which Warner had an interest substantially decreased the amount of film rental paid to the 5 theatre owning defendants, and substantially increased film rental paid to the non-theatre owning defendants.

144. Of the total film revenue received by Twentieth Century-Fox in 1944 from all theatres in the United States, 60.8 per cent was paid by exhibitors not defendants in this action; 14.1 per cent was paid by its own theatres; 1.26 per cent by Loew theatres; 5.52 per cent by RKO theatres; 13.46 per cent by theatres in which Paramount had an interest; and 4.82 per cent by Warner theatres.

145. On January 1, 1935, there were 13,386 theatres operating in the United States. In 1945, there were 18,076 theatres operating in the United States.

[fol. 3872] 146. In about 60 per cent of the 92 cities having populations of over 100,000, there are independent first-run theatres in competition with those of the major defendants except so far as it may be restricted by the trade practices found to have unreasonably restrained competition.

147. In about 91 per cent of the 92 cities with over 100,000 population, there is competition on first runs between independent theatres and theatres of one or more of the defendants, or among the defendants themselves, except so far as it may be restricted by the trade practices found to have unreasonably restrained competition. In the remainder of the 92 cities there is always competition in some run.

148. In the aforementioned 92 cities, at least 70% of all of the first run theatres are affiliated with one or more of the major defendants. In 4 of said cities there are no affiliated theatres. In 38 of said cities there are no inde-

pendent first run theatres. In the remaining 50 cities the degree of first run competition varies from the most predominantly affiliated first run situations, such as Boston, Chicago, Los Angeles, Philadelphia, St. Paul, and Washington, D. C., in each of which the independent first run theatres played less than eleven of the defendants' features on first run during the 1943-1944 season, to the most predominantly independent first run situations, such as Nashville, Louisville, Indianapolis, and St. Louis, where the affiliated first run theatres played at least 31 of the defendants' pictures on first run during that season. In none of the said 50 cities did less than three of the distributor-defendants license their product on first run to the affiliated theatres. In 19 of said 50 cities less than three defendant-distributors licensed their product on first run to independent theatres. In a majority of said 50 cities the major share of all of the defendants' features were licensed for first run exhibition in theatres affiliated with the major defendants.

[fol. 3873] 149. Loew's operates first-run theatres in 36 of the 92 cities in the United States with more than 100,000 population; in every one of these 36 cities, there are other "first-run" theatres exhibiting the features of one or more of the other defendant distributors; in 21 of these 36, one or more of the other first-run theatres are operated by independents.

150. Of the 92 cities in the United States having a population in excess of 100,000, Twentieth Century-Fox is interested in first run theatres in 16 and licenses its features to them. In 4 of the remaining cities, none of the defendants has theatre interests. This leaves 72 cities in which there are first run theatres operated by defendants other than Twentieth Century-Fox. In 23 of the 72 cities, Twentieth Century-Fox licenses its features to independent exhibitors.

151. Except for a very limited number of theatres in the very largest cities, the 18,000 and more theatres in the United States exhibit the product of more than one distributor. Such theatres could not be operated on the product of only one distributor.

152. There is no substantial proof that any of the corporate defendants was organized or has been maintained for the purpose of achieving a national monopoly either in

production, distribution, or exhibition of motion pictures, except as found in findings 153 and 154 below:

153. In localities where there is ownership by a single defendant of all the first-run theatres, there is no sufficient proof that it has been for the purpose of creating a monopoly and has not rather arisen from the inertness of the competitors, their lack of financial ability to build theatres comparable to those of the defendants, or from the preference of the public for the best equipped houses and not from "inherent vice" on the part of these defendants.

154. The illegalities and restrain-s herein found, are not in the ownership of many or most of the best-theatres by [fol. 3874] the producer-distributors, but in admission price-fixing, non-competitive granting of runs and clearances, unreasonable clearances, formula deals, master agreements, franchises, block-booking, pooling agreements and certain discriminations among licensees between defendants and independents. These practices, if employed in the future, in favor of powerful independents would effect all of the undesirable results that have existed when the five exhibitor defendants and their subsidiaries have owned or controlled numerous theatres in which the defendants' pictures have been exhibited.

155. Total divestiture would be injurious to the corporations concerned and would be damaging to the public.

156. Total divestiture would not remedy the price-fixing, systems of clearance, formula deals, master agreements and franchises, block-booking, pooling agreements and the other practices which have been found unreasonably to restrict competition.

157. During the 9 pre-war years of 1933-1941, the average cost of American made Warner features rose from $241,000 in 1933 to $448,000 in 1940. By 1945 the average cost had risen to $1,371,000.

158. In the past the foreign business of Warner has been exceedingly profitable.

159. With the cessation of the war the foreign markets for Warner pictures are being severely restricted.

160. The arbitration system created by the Consent Decree of November 20, 1940, has demonstrated its usefulness

in dealing with exhibitors' complaints of unreasonable clearance and if extended to cover differences which may occur under the system to be established by the Decree herein, will be effective and result in quick and expeditious decisions and a saving of time and money.

[fol. 3875] CONCLUSIONS OF LAW

1. The court has jurisdiction of this cause under the provisions of the Act of July 2, 1890 entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," hereinafter referred to as the Sherman Act.

2. Universal Pictures Company, Inc. and Screen Gems, Inc. have not violated the Sherman Act and should be dismissed as defendants herein.

3. None of the defendants herein has violated the Sherman Act by monopolizing or attempting to monopolize or conspiring to monopolize the production of motion picture films.

4. The consent decree entered herein on November 20, 1940, does not foreclose enforcement in this suit at this time of any rights or remedies, which the plaintiff may have against any of the defendants by virtue of violations of the Sherman Act by them, except such acts as were in accord with such decree during the period it was in force.

5. None of the defendants herein has violated the Sherman Act by combining, conspiring or contracting to restrain trade in any part of the business of producing motion pictures or by monopolizing, attempting to monopolize, or conspiring to monopolize such business.

6. The defendants, and each of them are entitled to judgment dismissing all claims of the plaintiff based upon their acts as producers, whether as individuals or in conjunction with others.

7. The defendants Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's, Incorporated; Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc.; Keith-Albee-Orpheum Corporation; RKO Proctor [fol. 3876] Corporation; RKO Midwest Corporation; Warner Bros. Pictures Inc.; Vitagraph, Inc.; Warner Bros. Cir-

cuit Management Corporation; Twentieth Century-Fox Film Corporation; National Theatres Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation have unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures and attempted to monopolize such trade and commerce, both before and after the entry of said consent decree, in violation of the Sherman Act by:

(a) Acquiescing in the establishment of a price fixing system by conspiring with one another to maintain theatre admission prices;

(b) Conspiring with each other to maintain a nation-wide system of runs and clearances which is substantially uniform in each local competitive area.

8. The distributor defendants Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's Incorporated; Radio-Keith-Orpheum Corporation; RKO Radio Pictures, Inc.; Warner Bros. Pictures, Inc.; Vitagraph, Inc.; Twentieth Century-Fox Film Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation, have unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures and attempted to monopolize such trade and commerce, both before and after the entry of said consent decree, in violation of the Sherman Act by:

(a) Conspiring with each other to maintain a nation-wide system of fixed minimum motion picture theatre admission prices;

[fol. 3877] (b) Agreeing individually with their respective licensees to fix minimum motion picture theatre admission prices;

(c) Conspiring with each other to maintain a nation-wide system of runs and clearances which is substantially uniform as to each local competitive area;

(d) Agreeing individually with their respective licensees to grant discriminatory license privileges to theatres affili-

ated with other defendants and with large circuits as found in finding No. 110 above;

(e) Agreeing individually with such licensees to grant unreasonable clearance against theatres operated by their competitors;

(f) Making master agreements and franchises with such licensees;

(g) Individually conditioning the offer of a license for one or more copyrighted films upon the acceptance by the licensee of one or more other copyrighted films, except in the case of the United Artists Corporation;

(h) The defendants Paramount and RKO making formula deals.

9. The exhibitor-defendants, Paramount Pictures, Inc.; Loew's, Incorporated; Radio-Keith-Orpheum Corporation; Keith-Albee-Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros. Pictures, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; and National Theatres Corporation have unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures both before and after the entry of said consent decree, in violation of the Sherman Act by:

(a) Jointly operating motion picture theatres with each other and with independents through operating agreements or profit-sharing leases;

[fol. 3878] (b) Jointly owning motion picture theatres with each other and with independents through stock interests in theatre buildings;

(c) Conspiring with each other and with the distributor-defendants to fix substantially uniform minimum motion pictures theatre admission prices, runs, and clearances;

(d) Conspiring with the distributor-defendants to discriminate against independent competitors in fixing minimum admission price, run, clearance and other license terms.

10. The Formula deals, master agreements and franchises referred to in Findings 86, 88 and 89 have tended to restrain trade and violate Section 1 of the Sherman Act.

11. Block-booking as hereinabove defined, violates the Sherman Act.

12. Further conclusions of law are made and embodied in the decree filed herewith.

Dated: December 31, 1946.

Augustus N. Hand, United States Circuit Judge;
Henry W. Stoddard, United States District Judge;
John Bright, United States District Judge.

[fol. 3879] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Equity No. 87-273

UNITED STATES OF AMERICA, Plaintiff

against

PARAMOUNT PICTURES, INC., PARAMOUNT FILM DISTRIBUTING CORPORATION, Loew's Incorporated, Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, RKO Midwest Corporation, Warner Bros. P tures, Inc., Vitagraph, Inc., Warner Bros. Circuit Management Corporation, Twentieth Century-Fox Film Corporation, National Theatres Corporation, Columbia Pictures Corporation, Screen Gems, Inc., Columbia Pictures of Louisiana, Inc., Universal Corporation, Universal Pictures Company, Inc., Universal Film Exchanges, Inc., Big U Film Exchange, Inc., and United Artists Corporation, Defendants.

DECREE—December 31, 1946

The court having rendered its opinion herein on June 11, 1946, having duly considered the proposals of the parties and of *amici curiae* as to its findings and judgment, and having filed its findings of fact and conclusions of law, wherein certain of the defendants herein were found to have violated the Act of Congress approved July 2, 1890, 26 Stat. 209, commonly known as the Sherman Act,

[fol. 3880] IT IS HEREBY ORDERED, ADJUDGED AND DECREED, AS follows:

I.

1. The complaint is dismissed as to the defendants Screen Gems, Inc. and the corporation named as Universal Pictures Company, Inc., merged during the pendency of this case into the defendant Universal Corporation. The complaint is also dismissed as to all claims made against the remaining defendants herein based upon their acts as producers, whether as individuals or in conjunction with others.

II.

Each of the defendant distributors, Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's, Incorporated; Radio-Keith-Orpheum Corporation; RKO Radio Pictures, Inc.; Warner Bros. Pictures, Inc.; Warner Bros. Pictures Distributing Corporation [formerly known as Vitagraph, Inc.]; Twentieth Century-Fox Film Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation; and the successors of each of them, and any and all individuals who act in behalf of any thereof with respect to the matters enjoined, and each corporation in which said defendants or any of them own a direct or indirect stock interest of more than fifty per cent, is hereby enjoined:

1. From granting any license in which minimum prices for admission to a theatre are fixed by the parties, either in writing or through a committee, or through arbitration, or upon the happening of any event or in any manner or by any means.

2. From agreeing with each other or with any exhibitors or distributors to maintain a system of clearances; the term "clearances" as used herein meaning the period of time [fol. 3881] stipulated in license contracts which must elapse between runs of the same feature within a particular area or in specified theatres.

3. From granting any clearance between theatres not in substantial competition.

4. From granting or enforcing any clearance against theatres in substantial competition with the theatre receiv-

ing the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted. Whenever any clearance provision is attacked as not legal under the provisions of this decree, the burden shall be upon the distributor to sustain the legality thereof.

5. From further performing any existing franchise to which it is a party and from making any franchises in the future. The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as a part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.

6. From making or further performing any formula deal or master agreement to which it is a party. The term "formula deal" as used herein means a licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross. The term "master agreement" means a licensing agreement, also known as a "blanket deal" covering the exhibition of features in a number of theatres usually comprising a circuit.

7. From performing or entering into any license in which the right to exhibit one feature is conditioned upon the licensee's taking one or more other features. To the extent [fol. 3882] that any of the features have not been trade shown prior to the granting of the license for more than a single feature, the licensee shall be given by the licensor the right to reject twenty per cent of such features not trade shown prior to the granting of the license, such right of rejection to be exercised in the order of release within ten days after there has been an opportunity afforded to the licensee to inspect the feature.

8. From licensing in the future any feature for exhibition in any theatre, not its own, in any manner except the following:

(a) A license to exhibit each feature released for public exhibition in any competitive area shall be offered to the operator of each theatre in such area who desires to exhibit it on some run [other than that upon

which such feature is to be exhibited in the theatre of the licensor] selected by such operator, and upon uniform terms;

(b) Each license shall be granted solely upon the merits and without discrimination in favor of affiliates, old customers or others;

(c) Where a run is desired, or is to be offered, upon terms which exclude simultaneous exhibition in competing theatres, the distributor shall notify, not less than thirty days in advance of the date when bids will be received, all exhibitors in the competitive area, offering to license the features upon one or more runs, and in such offer shall state the amount of a flat rental as the minimum for such license for a specified number of days of exhibition, the time when the exhibition is to commence and the availability and clearance, if any, which will be granted for each such run. Within fifteen days after receiving such notice, any exhibitor in such competitive area may bid for such license, and in his bid [fol. 3883] shall state what run such exhibitor desires and what he is willing to pay for such feature, which statement may specify a flat rental, or a percentage of gross receipts, or both, or any other form of rental, and shall also specify what clearance such exhibitor is willing to accept, the time and days when such exhibitor desires to exhibit it, and any other offers which such exhibitor may care to make. The distributor may reject all offers made for any such feature, but in the event of the acceptance of any, the distributor shall grant such license upon the run bid for to the highest responsible bidder, having a theatre of a size, location and equipment adequate to yield a reasonable return to the licensor. The method of licensing specified in this subdivision shall not be required in areas where there is no competition among theatres or in run, or in which there is no offer made by any exhibitor within the time above mentioned. The words "exclude simultaneous exhibition" shall be held to mean the exhibition of a specified run in one theatre with clearance over other theatres in the competitive area. The words "competitive area" shall refer to the territory occupied by more than one theatre in which it may fairly and

reasonably be said that such theatres compete with each other for the exhibition of features on any run.

(d) Each license shall be offered and taken theatre by theatre and picture by picture.

(e) A theatre is not a defendant's own theatre unless it owns therein a legal or equitable interest of ninety-five per cent or more, either directly or through affiliates or subsidiaries.

9. From arbitrarily refusing the demand of an exhibitor, who operates a theatre in competition with another theatre not owned or operated by a defendant distributor, or its affiliate or subsidiary, made by registered mail, addressed to the home office of the distributor, to license a feature to him [fol. 3884] for exhibition on a run selected by the exhibitor, instead of licensing it to another exhibitor for exhibition in his competing theatre on such run. Such demand shall be deemed to have been refused either upon the receipt by the exhibitor of a refusal in writing or upon the expiration of ten days after the receipt of the exhibitor's demand.

III.

Each of the defendant exhibitors, Paramount Pictures, Inc., Loews, Incorporated, Radio-Keith-Orpheum Corporation, Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, RKO Midwest Corporation, Warner Bros. Pictures, Warner Bros. Circuit Management Corporation, Twentieth Century Fox Film Corporation, and National Theatres, Inc. is hereby enjoined and restrained:

(1) From performing or enforcing agreements referred to in paragraphs 5 and 6 of the foregoing section II hereof to which it may be a party.

(2) From making or continuing to perform pooling agreements whereby given theatres of two or more exhibitors normally in competition are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors or whereby profits of the "pooled" theatres are divided among the owners according to prearranged percentages.

(3) From making or continuing to perform agreements that the parties may not acquire other theatres in a competi-

tive area where a pool operates without first offering them for inclusion in the pool.

(4) From making or continuing leases of theatres under which it leases any of its theatres to another defendant or to an independent operating a theatre in the same competitive area in return for a share of the profits.

(5) From continuing to own or acquiring any beneficial interest in any theatre, whether in fee or shares of stock or [fol. 3885] otherwise, in conjunction with another defendant, and from continuing to own or acquire such an interest in conjunction with an independent [meaning any former, present or putative motion picture theatre operator which is not owned or controlled by the defendant holding the interest in question,] where such interest shall be greater than five per cent unless such interest shall be ninety-five per cent or more. The existing relationships which violate this provision shall be terminated within two years. The relationships between the defendants and independents which violate this provision shall be terminated by a sale to, or purchase from the co-owner or co-owners, or by a sale to a party not one of the other defendants. In dissolving relationships among defendants and between defendants and independents which violate this provision, one defendant may acquire the interest of another defendant or independent if such defendant desiring to acquire such interest shall show to the satisfaction of the court, and the court shall first find, that such acquisition will not unduly restrain competition in the exhibition of feature motion pictures. Each of the defendants shall submit to this court within six months a statement outlining the extent to which it has complied and the manner in which it proposes to comply with this provision, setting forth in detail the names, locations, and general descriptions of the theatres, corporate securities, and beneficial interests of any kind involved, the sales thereof that it has made, and such interests as it proposes to acquire, with a statement of facts regarding each competitive situation involved in such proposed acquisition sufficient to show the probable effect of such acquisition on that situation. Similar reports shall be made quarterly thereafter until this provision shall have been fully complied with. Reasonable notice of such acquisition plans shall be served upon the Attorney General and plaintiff shall be given an opportunity to be heard with re-

spect thereto before any such acquisition shall be approved by the court.

[fol. 3886] (6) From expanding its present theatre holdings in any manner whatsoever except as permitted in the preceding paragraph.

(7) From operating, booking, or buying features for any of its theatres through any agent who is known by it to be also acting in such manner for any other exhibitor, independent or affiliate.

IV.

Nothing contained in this Decree shall be construed to limit, in any way whatsoever, the right of each distributor-defendant to license, or in any way to arrange or provide for, the exhibition of any or all the motion pictures which it may at any time distribute, in such manner, and upon such terms, and subject to such conditions as may be satisfactory to it, in any theatre in which such distributor defendant has or may acquire pursuant to the terms of this Decree, a proprietary interest of ninety-five per cent or more either directly or through subsidiaries.

V.

The provisions of the existing consent decree are hereby declared to be of no further force or effect, except insofar as may be necessary to conclude arbitration proceedings now pending and to liquidate in an orderly manner the financial obligations of the defendants and the American Arbitration Association, incurred in the establishment of the consent decree arbitration systems. Existing awards and those made pursuant to pending proceedings shall continue to be enforceable. But this shall in no way preclude the parties or any other persons from setting up a reasonable system of arbitration either through the use of the present boards or any others as among themselves.

[fol. 3887]

VI.

For the purpose of securing compliance with this Decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of antitrust matters, and on notice to any defendant, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally

recognized privilege, (1) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Decree, and that during the times that the plaintiff shall desire such access, counsel for such defendant may be present, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interview counsel for the officer or employee interviewed and counsel for such defendant company may be present.

Information obtained pursuant to the provisions of this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

VII.

Paragraphs 7 and 8 of section II of this judgment shall not become effective until July 1, 1947.

[fol. 3888]

VIII.

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to the judgment and no others, to apply to the court at any time for such orders or direction as may be necessary or appropriate for the construction, modification, or carrying out of the same, for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.

IX.

The operation of this judgment is stayed for sixty days from the date hereof, and, if an appeal is taken, for thirty days thereafter in order to enable any appellant to move before the Supreme Court for a stay in respect to any portion of the judgment from which an appeal has been taken.

Dated, December 31, 1946. Augustus N. Hand, United States Circuit Judge; Henry W. Goddard, United States District Judge; John Bright, United States District Judge.

[fol. 3889] IN UNITED STATES DISTRICT COURT

[Title omitted]

MEMORANDUM IN RE FINDINGS AND DECREE—December 31, 1946

In order to meet some of the objections raised at the hearing to the system of bidding for features described in the opinion of the court, we have modified the system there proposed so that competitive bidding will only be necessary within a competitive area and in such an area where it is desired by the exhibitors. In other words, the decree provides an opportunity to bid for any exhibitor in a competitive area who may desire to do so.

The arrangement for arbitration and an appeal board has been terminated except as to unfinished litigations and other matters referred to in the decree, because of the unwillingness of some of the parties to consent to their continuance. Nevertheless, as we have indicated in the opinion, these tribunals have dealt with trade disputes, particularly those as to clearances and runs, with rare efficiency, as both government counsel and counsel for other parties have conceded.

Indeed, the arbitration system set up under the consent decree of November 20, 1940, was created pursuant to the prayer of the amended and supplemental complaint by the [fol. 3890] United States filed November 14, 1940, in which, among other things, the plaintiff prayed that "a nation-wide system of impartial arbitration tribunals or such other means of enforcement as the court may deem proper be established pursuant to the final decree of this court in order to secure adequate enforcement of whatever general and nation-wide prohibitions of illegal practices may be contained therein."

We strongly recommend that some such system be continued in order to avoid cumbersome and dilatory court litigation and to preserve the practical advantages of the tribunals created by the consent decree.

Dated: December 31, 1946. Augustus N. Hand, United States Circuit Judge; Henry W. Goddard, United States District Judge; John Bright, United States District Judge.

[fol. 3891] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION.

SIRS:

Please take notice that the undersigned will bring the within motion on for a hearing before this Court at such place in the United States Court House, Foley Square, in the Borough of Manhattan, City, County and State of New York and on such day and at such hour as the Court may hereafter direct, of which direction you will receive further notice.

Dated, New York, N. Y., January 10, 1947.

Yours, etc., Simpson Thacher & Bartlett, Attorneys for Paramount Defendants, 120 Broadway, New York, N. Y.; Davis Polk Wardwell Sunderland & Kiendl, Attorneys for Loew's Defendants, 15 Broad Street, New York, N. Y.; Donovan Leisure Newton Lumbard & Irvine, Attorneys for RKO Defendants, 2 Wall Street, New York, N. Y.; Joseph M. Proskauer, Attorney for Warner Defendants, 11 Broadway, New York, N. Y.; Dwight Harris Koegel & Caskey, Attorneys for 20th Century Fox Defendants, 100 Broadway, New York, N. Y., by Albert C. Bickford.

To Hon. Tom C. Clark, Attorney General of the United States, Department of Justice, Washington, D. C.; Hon. F. X. McGohey, United States Attorney for the Southern District of New York, United States Court House, Foley Square, New York, N. Y.

[fol. 3892] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION

The Paramount, Loew, RKO, Warner and Twentieth Century-Fox defendants move the Court to amend and modify its Conclusions of Law and Judgment heretofore filed, in the following particulars:

1

To amend Paragraph (6) of Section III to read as follows:

"From expanding its present theatre holdings in any manner whatsoever, except as permitted in the preceding paragraph; or except for the purpose of acquiring theatres or interests therein in order to protect its investments, or in order to enter a competitive field, if such defendant shall show to the satisfaction of the Court, and the Court shall first find, that such acquisition will not unduly restrain competition in the exhibition of feature motion pictures. Reasonable notice of the intention to make any such acquisition shall be served upon the Attorney General and the plaintiff shall be given an opportunity to be heard with respect thereto before any such acquisition shall be approved by the Court."

The foregoing amendment is sought for the reason that the language of Paragraph (6) of Section III in the Judgment might be susceptible to interpretation at variance with the Court's opinion.

The moving defendants assume, in the light of the colloquy between the Court and counsel appearing at pages 3057 to 3063 of the record, and from the statements contained in the opinion and the Findings of Fact upon which this injunctive provision must be based, that it was not intended in this paragraph to enjoin the defendants from acquiring interests in theatres where necessary and proper to protect their investments or enter a competitive field, provided that they should first show to the Court that such acquisition would not unreasonably restrain competition.

It is thought that this was the clear intention of the Court because of the following language in the opinion:

> "But it (the divestiture provision applying to partial interests) shall not prevent a defendant from acquiring theatres or interests therein in order to protect its investments, or in order to enter a competitive field . . ."

The colloquy at the hearing on the decree (1057-63) indicated that the Court had rejected the Government's request [fol. 3893] for an absolute prohibition. Furthermore, the Court found unlawful only those holdings which it directed should be rearranged under Paragraph 5 of Section III,—the joint and partial interests.

Accordingly, the request for clarification is clearly justified. In *U. S.* v. *Crescent Amusement Co.*, 323 U. S. 173, 186, the Court said:

> "Where the proclivity for unlawful activity has been as manifest as here, the decree should operate as an effective deterrent to a repetition of the unlawful conduct and yet not stand as a barrier to healthy growth on a competitive basis."

2

(a) To add to Paragraph III (2) a sentence at the end thereof reading as follows:

> "The pooling agreements by one or more defendants with others not parties to this action, referred to herein, which violate this provision shall be dissolved within two years."

The ground upon which this amendment is sought is that no time was specified in this paragraph within which to comply with its provisions. While defendants will act diligently to comply, the task of dissolving pools with independents, involving, as they do, individuals and interests not parties to this action, is an involved and complicated one in some instances, and time must necessarily be consumed in dissolving them. Moreover, many of the pooled theatres have been operated for a long time by a defendant and the termination of the pools will require the owners to make other arrangements for the operation of their theatres

which cannot be done in the time now allowed by the decree. So far as pools between defendants are concerned, no time is asked beyond that already given by the Judgment.

(b) To amend Paragraph III (4) by adding the following sentence thereto:

"The leases referred to herein between a defendant and independents which violate this provision shall be terminated within two years."

The grounds for this amendment are the same as the grounds stated in the next preceding subparagraph hereof.

3

To amend Section VII to read as follows:

"Paragraph 7 of Sect. II of this Judgment shall not become effective until July 1, 1947.

Paragraphs 8 (a) and 8 (c) of Sect. II of this Judgment shall not become effective until July 1, 1947, and in the event of an Appeal to the Supreme Court by any party from these Paragraphs, such Paragraphs shall not become effective until ninety (90) days after the entry of final Judgment upon the mandate of the Supreme Court."

This Amendment to Section VII is necessary in order to postpone the effective date of Paragraphs 8(a) and 8(c) of [fol. 3894] Section II until the Supreme Court shall have decided any appeal which may be taken from the Judgment herein.

The method of licensing features required by paragraphs 8 (a) and 8 (c) of Section II is very different from that now in operation. That proposed new method of licensing is strongly opposed by organizations of independent exhibitors which sought to intervene in this action. To put this controversial new method of licensing into operation prior to a reasonable time after the final effective date of the Judgment herein is unnecessary and inappropriate because the Supreme Court may not approve the provisions in question, or may change or modify them. In that event, of course, further changes in the method of licensing features would be necessary with further disruption to the normal course of business.

This Court is most familiar with the complexities of the industry and the innovations that would be brought about by adoption of the method of licensing prescribed by this Court, and it should defer the effective date rather than pass this question to the Supreme Court for consideration before that Court can have an opportunity to understand the problems involved.

All parties concerned, including independent exhibitors, will be amply protected in the interim period pending a determination by the Supreme Court, because Paragraph 9 of Section II and Paragraphs 8 (b) and 8 (d) will become effective in accordance with the terms of the Judgment. The moving defendants will not apply to this Court or to the Supreme Court for a stay of the provisions of Paragraph 9 of Section II or Paragraphs 8 (b) and 8 (d) in the event that the requested postponement of the effective date of Paragraphs 8 (a) and 8 (c) is granted.

4

To amend Conclusion 9(d) to read as follows:

> "Conspiring with the distributor defendants to receive discriminatory license privileges as found in Finding No. 110 above."

This amendment is requested in order to conform the conclusion to Finding of Fact 110, Conclusion of Law 8 (d), and the Opinion of this Court. The Opinion stated that nothing therein contained should be construed as indicating that the distributor defendants discriminated among their licensees with respect to film rentals, clearances or minimum admission prices, and the Court said:

> "In the absence of such facts we are unable to infer that the distributor defendants have violated the Sherman Act in this particular regard. • • •"

There is no Finding of Fact that the exhibitor defendants discriminated or received discrimination with respect to film rentals, clearances, or minimum admission prices.

Finding 110 is the only finding with regard to discriminations, and it refers solely to the distributor defendants and does not include film rentals, clearances or minimum admission prices. Conclusion 8(d) is to the effect that the distributor defendants granted discriminatory license privi-

[fols. 3895-3896] leges as found in Finding 110 and the amendment which is sought would conform to this conclusion.

Wherefore, the moving defendants pray that the Court make and enter an order clarifying and amending the judgment and conclusions of law in accordance with the foregoing or, in the alternative, that the Court grant a rehearing, reargument or new trial as to the subject matter of this motion.

Dated, New York, N. Y., January 9, 1947.

Simpson Thacher & Bartlett, Attorneys for Paramount Defendants, 120 Broadway, New York, N. Y.; Davis Polk Wardwell Sunderland & Kiendl, Attorneys for Loew's Defendants, 15 Broad Street, New York, N. Y.; Donovan Leisure Newton Lumbard & Irvine, Attorneys for RKO Defendants, 2 Wall Street, New York, N. Y.; Joseph M. Proskauer, Attorney for Warner Defendants, 11 Broadway, New York, N. Y.; Dwight Harris Koegel & Caskey, Attorneys for 20th Century Fox Defendants, 100 Broadway, New York, N. Y., by Albert C. Bickford.

[fol. 3897] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION

To the Attorney General, Department of Justice, Washington, D. C.; John F. X. McGohey, Esq., United States Attorney for the Southern District of New York, United States Courthouse, Foley Square, New York, N. Y.; Donovan, Leisure, Newton & Lumbard, Esqs., Attorneys for Defendants Irving Trust Company as Trustee in Bankruptcy of Radio-Keith-Orpheum Corporation and other RKO defendants, 2 Wall Street, New York, N. Y.; J. Robert Rubin, Esq., 1540 Broadway, New York, N. Y., and Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs., Attorneys for Defendants Loew's Inc., et al., 15 Broad Street, New York, N. Y.; Robert W. Perkins, Esq., Attorney for Defendants Warner Brothers Pictures, Inc., et al., 321 West 44th Street, New York, N. Y.; Dwight, Harris, Koegel & Caskey, Esqs., Attorneys for Defendants, Twentieth Century-Fox Film Corporation, National Theatres Corporation, et al., 100 Broadway, New York, N. Y.; Simpson, Thatcher & Bartlett, Esqs., Attorneys for Paramount Pictures, Inc., et al., 120 Broadway, New [fol. 3898] York, N. Y.; Schwartz & Frohlich, Esqs., Attorneys for Defendant Columbia Pictures Corporation, et al., 1450 Broadway, New York, N. Y.; Charles D. Prutzman, Esq., Attorney for Defendants Universal Corporation, Universal Pictures Company, Inc., Universal Film Exchanges Inc., Big U Film Exchange Inc., 1250 Sixth Avenue, New York, N. Y.

SIRS:

Please Take Notice that the undersigned will bring the within motion on for a hearing before this Court at such place in the United States Court House, Foley Square, in the Borough of Manhattan, City, County and State of New York and on such day and at such hour as the Court may hereafter direct, of which direction you will receive further notice.

Dated: New York, N. Y., January 10, 1947.

Yours, etc., O'Brien, Driscoll & Raftery, Attorneys for Defendant United Artists Corporation, 152 West 42nd Street, New York 18, N. Y.

[fol. 3899] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION

The defendant United Artists Corporation moves the Court to amend and modify its Conclusions of Law and Judgment heretofore filed, in the following particulars:

1

To strike out the last sentence of Paragraph 4 of Section II, and that said paragraph shall read as follows:

"4. From granting or enforcing any clearance against theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted."

2

To amend Section VII to read as follows:

"Paragraph 7 of Sect. II of this Judgment shall not become effective until July 1, 1947.

Paragraphs 8(a) and 8(c) of Sect. II of this Judgment shall not become effective until July 1, 1947, but in the event of an Appeal to the Supreme Court by any party from these Paragraphs, such Paragraphs shall not become effective until ninety (90) days after the entry of final Judgment upon the mandate of the Supreme Court."

Wherefore, the moving defendant prays that the Court [fols. 3900-3902] make and enter an order clarifying the Judgment in accordance with the foregoing, or such other and further relief as the Court may deem fit and proper in the premises.

Dated: New York, January 10, 1947.

O'Brien, Driscoll & Raftery, Attorneys for Defendant United Artists Corporation, Office and P. O. Address, 152 West 42nd Street, New York 18, New York.

[fol. 3903] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION

To the Attorney General, Department of Justice, Washington, D. C.; John F. X. McGohey, Esq., United States Attorney for the Southern District of New York, United States Courthouse, Foley Square, New York, N. Y.; Simpson, Thatcher & Bartlett, Esqs., Attorneys for Paramount Pictures, Inc., et al., 120 Broadway, New York, N. Y. Donovan, Leisure, Newton & Lumbard, Esqs., Attorneys for Defendants Irving Trust Company as Trustee in Bankruptcy of Radio-Keith-Orpheum Corporation and other RKO defendants, 2 Wall Street, New York, N. Y.; J. Robert Rubin, Esq., 1540 Broadway, New York, N. Y., and Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs., Attorneys for Defendants Loew's Inc., et al., 15 Broad [fol. 3904] Street, New York, N. Y.; Robert W. Perkins, Esq., Attorneys for Defendants Warner Brothers Pictures Inc., et al., 321 W. 44th Street, New York, N. Y.; Dwight, Harris, Koegel & Caskey Esqs., Attorneys for Defendants, Twentieth Century-Fox Film Corporation, National Theatres Corporation, et al., 100 Broadway, New York, N. Y.; Schwartz & Frohlich, Esqs., Attorneys for Defendant Columbia Pictures Corporation, et al., 1450 Broadway, New York, N. Y.; O'Brien, Driscoll & Raftery, Esqs., Attorneys for United Artists Corporation, 152 W. 42nd Street, New York, N. Y.

SIRS:

Please Take Notice that the undersigned attorney for the defendants Universal Corporation, Universal Pictures Company, Inc., Universal Film Exchanges Inc., and Big U Film Exchange Inc., will move this Court on the 22nd day of January, 1947, at the United States Courthouse, Room 1705 in the City of New York, New York, at 10:30 o'clock in the forenoon of that day for an order, pursuant to Rule 52-B of the Federal Court Rules, amending the findings of the Court, making additional findings and amending the

judgment accordingly, in accordance with the motion annexed hereto.

Dated: January 10, 1947.

Charles D. Prutzman, Attorney for Defendants Universal Corporation, Universal Pictures Company, Inc., Universal Film Exchanges Inc., Big U. Film Exchange Inc., 1250 Sixth Avenue, New York, N. Y.

[fol. 3905] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION

Come now the defendants Universal Corporation, Universal Pictures Company, Inc., Universal Film Exchanges Inc., and Big U Film Exchange, Inc., and each of them, and by their attorney below named move this Court under Rule 52-B of the Federal Court Rules to amend the findings of fact and decree as follows:

(1) To amend the definition of franchise, set forth in Finding of Fact No. 1 and item 5 of Article II of the decree, to accord with the evidence, to read as follows:

A licensing agreement, or series of licensing agreements, entered into as part of the same transaction, granting preferential exhibition rights, in effect for more than one motion picture season, and covering the exhibition of features released by one distributor during the entire period of the agreement.

(2) To amend Finding of Fact No. 89 to accord with the evidence, to read as follows:

Franchises have been entered into by the distributor-defendants with affiliated and independent circuits, and such franchises unreasonably restrain the trade of competing independent theatres, because they cover too long a period (more than one season), and also because they grant perferential rights to powerful theatre circuits for all of the features released by a given distributor.

[fol. 3906] (3) To amend Conclusion of Law No. 8, subdivision (f) to accord with the evidence, to read as follows:

Making master agreements, and making franchises with circuits of theatres which unreasonably restrained the trade of competing independent theatres.

(4) To amend the first sentence of Article II, item 5 of the decree, to accord with the evidence, to read as follows:

From further performing any existing franchise with any circuit of theatres to which it is a party and from making any such franchises in the future, except such as do not unreasonably restrain the trade of competing theatres.

(5) To amend sub-division (d) of item 8 of Article II of the decree to read as follows:

Each license shall be offered and taken theatre by theatre and picture by picture, except as otherwise authorized hereby.

(6) To amend Finding of Fact No. 64 to accord with the evidence, by adding the following sentence:

None of such exceptional features were distributed by Universal.

(7) To amend item 2 of Article II of the decree, to accord with the law and to render this provision of the decree consistent with other provisions, to read as follows:

From agreeing with each other or with any exhibitors or distributors to maintain a system of clearances; the term "clearances" as used herein meaning the period of time stipulated in license contracts which must elapse between runs of the same feature within a particular area or in specified theatres. The making by a distributor, acting independently of other distributors, of a series of license contracts with one exhibitor, or of a series of license contracts with more than one exhibitor, which contain clearance provisions, shall not be considered to be the maintenance of a "system of clearances."

[fol. 3907] (8) To amend Article VII of the decree to postpone the effectiveness of items 8(a) and 8(c) of Article II, in the event of an appeal, until ninety (90) days after entry of judgment on the mandate of the Supreme Court.

The amendments suggested in Items (1), (2), (3), (4) and (5) are requested for the following reasons:

The findings of fact, conclusions of law and decree in their present form condemn all long-term contracts made

by Universal with any exhibitor, whether a member of a circuit affiliated with a major defendant, or a member of an independent circuit or a single independent theatre. Universal believes that the findings, conclusions and decree ought to be corrected in the respects heretofore stated for two reasons:

1. In the first place a mere long-term commitment assuring an exhibitor that he may have Universal pictures is not properly to be considered a franchise, because it lacks a very essential element of a franchise, to wit, the element of exclusiveness, for a limited time at least. All of the franchises in evidence, it believed, involve this element. Yet franchise has been defined in the findings, conclusions and decree in such a way as to not require the presence of this element, and to condemn mere long-term commitments always considered perfectly legal.

2. In the second place Universal defendants have been permanently restrained from making such long-term commitments, much less true franchises, even with single independent theatres. Universal submits that it ought to be permitted to make true franchises (involving the element of exclusiveness) with all single independent theatres. The issue in this case certainly had to do with the relationships between the defendant-distributors and the major exhibition chains. Conceding for the purpose of argument only that this issue might be expanded to include the relationships between the defendant-distributors and the large independent circuits or even beyond this to include all independent circuits, it certainly cannot be expanded to include the rela- [fol. 3908] tionships between non-integrated distributors such as Universal and single independent theatres. Indeed, it is plain that the object of the proceedings must have been to foster and protect these very relationships.

What the Sherman Act condemns is undue or unreasonable restraints of interstate commerce, *Standard Oil* v. *U. S.*, 221 U. S. 1; *U. S.* v. *American Tobacco Co.*, 221 U. S. 106. The meaning of this was dealt with in *Appalachian Coals* v. *U. S.*, 288 U. S. 344, pp. 359-361, where it was said:

> "The decisions established, said this Court in *Nash* v. *United States*, 229 U. S. 373, 376, 'that only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly

restricting competition or unduly obstructing the course of trade' ".

The considerations necessary to be dealt with in this connection were also outlined in the *Appalachian Coals* case, wherein it was said:

> "In applying this test, a close and objective scrutiny of particular conditions and purposes is necessary in each case. Realities must dominate the judgment. The mere fact that the parties to an agreement eliminate competition between themselves is not enough to condemn it. 'The legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade every regulation of trade, restrains.' *Chicago Board of Trade* v. *United States, supra.* The familiar illustrations of partnerships, and enterprises fairly integrated in the interest of the promotion of commerce, at once occur. The question of the application of the statute is one of intent and effect, and is not to be determined by arbitrary assumptions."

Chicago Board of Trade v. *United States,* 246 U. S. 231, at p. 238; *Federal Trade Commission* v. *Gratz,* 253 U. S. 421, at p. 438 are to the same effect.

[fol. 3909] Thus in considering the legality under the Sherman Act of a long-term arrangement for the sale of pictures, it is essential to consider, *inter alia,* the following:

(1) the size and economic power of the distributor, in this case Universal, which is a moderately sized distributor, *i.e.* to what degree it approaches monopolistic power.

(2) The size and economic power of the exhibitor.

(3) The duration in years of the arrangement.

(4) Whether or not the arrangement contains the element of exclusiveness, and the period of time during which this exclusiveness operates.

(5) The effect upon competition.

Exclusive dealing contracts for a term of years are inherently legal even under Sec. 3 of the Clayton Act (Title 15 USC, Sec. 14, 38 Stat. 731, Act of October 15, 1914, c.

323, Sec. 3) where there is no undertaking by the purchaser to abstain from using or dealing in the goods of others. This is thoroughly settled law. Restatement Law of Contracts, c. 18, Sec. 516; Williston on Contracts, Sec. 1645; *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568; *U. S.* v. *Bausch & Lomb*, 45 Fed. Sup. 387, at p. 398, where Judge Rifkind said that the "restraining covenant is for the protection of the purchaser who is spending large sums to develop his good will and to enlarge the public patronage of a relatively new article of commerce", and held the exclusive dealing arrangement before him to be legal. The Supreme Court affirmed in 321 U. S. 707.

If exclusive-dealing contracts for a term of years are inherently lawful, it is obvious that mere long-term commitments without the exclusive feature, such as the present definition of franchise condemn, are *a fortiori* legal.

Finding of Fact No. 22 proposed by Universal read in part as follows:

> [fol. 3910] "In order to create competition in the areas where the exhibitors had failed and refused to license Universal product or exhibit same, Universal induced persons, firms and corporations to invest substantial sums of money in opening new theatres or improving existing theatres and granted to these accounts deals varying from one year to five years wherein and whereby these theatres were granted the exclusive right to exhibit Universal pictures for the period of said deals, in the specific theatres mentioned in the agreements and for the runs listed therein, whether the deal was for one year or longer.

This properly represents the usual situation which led Universal to enter into a franchise arrangement with a single independent theatre or small independent chain. It was the reverse of unduly restraining interstate commerce.

The decree unconditionally preserved to the major defendants the right to maintain "show-windows" for their own pictures. Universal should not have to buy theatres in order to acquire "show-windows", but ought to be permitted to acquire them through contractual arrangements, i.e. through franchises not unreasonably restraining the trade of competing theatres. In situations in which there are presently no theatres it is obvious that potential exhi-

bitors will not put money into theatre projects unless long-term prior-run commitments can be obtained for the pictures of one or more distributors. In such situations, therefore, the granting of franchises is plainly a public benefit.

The proposed amendments to the findings, conclusions and decree to take care of this situation seem obviously called for, are simple, and do not interfere in any way with the objectives of the decree.

The amendments suggested in Items (6) and (7) speak for themselves. If the suggested amendment (7) is not made, it is feared that the same thing which the Court now regards as an illegal system of fixing minimum admission prices will be regarded as an illegal system of fixing clearances (despite the admitted legality of a single clearance [fol. 3911] which is reasonable) by reason of the expression "or exhibitors" being used, and entirely aside from any conspiracy or agreement among distributors.

Wherefore, said defendants pray that the findings of this Court be amended and added to in the foregoing respects, and that the judgment of the Court be amended as above indicated, or, in the alternative, that the Court grant a rehearing, re-argument or new trial as to the subject-matter of this motion.

Dated: January 10, 1947.

Charles D. Prutzman, Attorney for the Universal Defendants, 1250 Sixth Avenue, New York, N. Y.

[fol. 3912] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION FOR LEAVE TO INTERVENE

American Theatres Association, Inc.; Southern California Theatre Owners Association; Joseph Moritz; Southern California Amusement Company, Inc.; Exhibitors' Service, Inc.; Lawrence Capitol, Inc.; Bijou Amusement Company and Paul Realty Company; Andy Anderson; Arch and Milas L. Hurley; Raymond and Willard Gervers; Gamble Enterprises, Inc.; and St. Louis Ambassador Theatre, Inc., Eden Theatre Company, St. Louis Missouri Theatre, Inc., and Fanchon & Marco Service Corporation having filed in this Court a Motion for Leave to Intervene and Intervening Petition which came on before this Court for argument on October 21, 1946, and this Court having heard argument thereon,

It is hereby ordered, adjudged and decreed, that the said Motion for Leave to Intervene is hereby denied but said moving parties are hereby authorized to be heard in oral argument before this Court and to file briefs as amicus curiae.

Augustus N. Hand, Circuit Judge, Henry W. Goddard, District Judge, John Bright, District Judge.

January 21st, 1947.

[fols. 3913-3914] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION FOR LEAVE TO INTERVENE

This cause was heard on application of W. C. Allred, et al., for leave to intervene as parties defendant herein, and the Court having considered the arguments of counsel and being advised in the premises, it is

Ordered, that W. C. Allred, et al. be and they hereby are denied leave to intervene herein as parties defendant but are allowed to file a brief and be heard on the settlement of the decree.

Dated: January 21st, 1947.

Augustus N. Hand, Circuit Judge, Henry W. Goddard, District Judge, John Bright, District Judge.

[fol. 3915] IN UNITED STATES DISTRICT COURT

OPINION OF EXPEDITING COURT, (ENDORSED ON MOTION PAPERS)—Dated February 3, 1947

Motion of Columbia Defendants: "Motion denied. Feb. 3, 1947. Augustus N. Hand, U.S.C.J. Henry W. Goddard, D.J. John Bright, D.J."

Motion of United Artists: "Motion denied. Feb. 3, 1947. Augustus N. Hand, U.S.C.J. Henry W. Goddard, D.J. John Bright, D.J."

Motion of Universal Defendants: "The within motion is denied. Feb. 3, 1947. Augustus N. Hand, U.S.C.J. Henry W. Goddard, D.J. John Bright, D. J."

Motion of Paramount, Twentieth Century-Fox, Loew, RK.O. and Warner Defendants: "Motion denied as to 1, 3 and 4; granted as to 2(a) and (b) by extending the time of dissolution and termination to July 1, 1947. To this end, Paragraph III(2) of this decree is modified by adding at the end the following:

> "The Pooling agreements by one or more defendants with others not parties to this action which violate this provision shall be dissolved prior to July 1, 1947."

Paragraph III(4) of the decree is modified by adding at the end of the following:

> "The leases referred to herein between a defendant and independents which violate this provision shall be terminated prior to July 1, 1947."

Settle order on Notice.

Feb. 3, 1947

[fol. 3916] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER RE MOTIONS TO AMEND AND CLARIFY FINDINGS AND DECREE

The Court having entered its findings and judgment herein on December 31, 1946, and having heard and considered the motions to amend and clarify the findings and judgment filed by all defendants and having decided said motions on February 3, 1947, with a direction to settle the

order therein upon due notice to the parties, which has now been given,

It is Hereby Ordered, Adjudged and Decreed as follows:

Paragraph III (2) of said judgment is hereby modified by adding at the end thereof the following: "The Pooling agreement by one or more defendants with others not parties to this action which violate this provision shall be dissolved prior to July 1, 1947."

Paragraph III (4) of said judgment is hereby modified by adding at the end thereof the following: "The leases referred to herein between a defendant and independents which violate this provision shall be terminated prior to July 1, 1947."

Said motions are in all other respects hereby denied.

(S.) Augustus N. Hand, United States Circuit Judge.
(S.) Henry W. Goddard, United States District Judge. (S.) John Bright, United States District Judge.

Dated this 10th day of February, 1947.

(Filed Feb. 11, 1947, U. S. District Court, S. D. of New York.)

[fol. 3917] In the District Court of the United States

[Title omitted]

Petition for Appeal

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final order and decree of this Court entered on the 31st day of December, 1946, does hereby pray an appeal from said final order and decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the order erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript

of the record, proceedings, and documents upon which said final order and decree was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

(S.) Wendell Berge, Assistant Attorney General;
(S.) Robert L. Wright, Special Assistant to the Attorney General:

Dated this 18 day of February, 1947.

Copy of Decree and memorandum in re Findings & Decree included in original as filed.

[fol. 3918] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the final order and decree of said District Court entered on December 31, 1946, as amended, in the above-entitled cause, and says that in the entry of the final order and decree the District Court committed error to the prejudice of the said plaintiff in the following particulars:

1. The Court erred in concluding that the relief granted was adequate to prevent the guilty defendants from unreasonably restraining competition in the motion picture business in the future.

2. The Court erred in concluding that the major defendants had not actually achieved a monopoly in exhibition, either singly or collectively.

3. The Court erred in not concluding that the defendants had actually achieved a collective monopoly of distribution.

4. The Court erred in failing to prohibit the guilty defendants from making clearance agreements in the future.

[fol. 3919] 5. The Court erred in failing to prohibit the continued use by the major defendants of each other's theatres as exhibition outlets for each other's films.

6. The Court erred in failing to order ultimate divorcement of the distribution and production businesses of the major defendants from their theatre operations.

7. The Court erred in failing to require the major defendants to divest themselves of all their theatre holdings.

8. The Court erred in failing to prohibit absolutely any further acquisition of theatre interests by the major defendants.

9. The Court erred in failing to prohibit the major defendants from continuing to exhibit their own films in their own theatres upon terms which discriminate against their competitors.

10. The Court erred in decreeing competitive bidding as appropriate relief in situations where the defendants' theatres were in competition with independent theatres.

11. The Court erred in failing to require that all competitive bids be stated in terms of flat rental.

12. The Court erred in concluding that none of the defendants had attempted to monopolize or conspired to monopolize or restrain trade in the business of producing motion pictures.

13. The Court erred in concluding that the factor of print cost would confine exhibition to high-priced theatres unless a system of successive runs protected by clearance is employed.

[fol. 3920] 14. The Court erred in concluding that a grant of clearance when not accompanied by a fixing of admission prices or by an undue extension as to area or duration affords a fair protection to the licensee without unreasonably interfering with the public interest.

15. The Court erred in concluding that the fixing of clearance in license contracts or by other agreements is essential to the reasonable conduct of the motion picture business.

16. The Court erred in concluding that competition can be introduced into the present system of fixing admission prices, clearances, and runs by requiring a defendant-distributor, when licensing its features, to grant the license for each run at a reasonable clearance (if clearance is involved) to the highest bidder.

17. The Court erred in concluding that the percentage of features on the market which any of the five major defend-

ants might play in its own theatres would be so small as in no wise to approximate a monopoly of film exhibition.

18. The Court erred in concluding that the competitive bidding decreed by it would make it impossible for the defendants to discriminate unreasonably in favor of circuit theatres and against independents.

19. The Court erred in concluding that a defendants' interest of five per cent or less of a theatre investment in which others were also interested was *de minimis* and only to be [fol. 3921] treated as an inconsequential investment in exhibition.

20. The Court erred in concluding that the defendants' theatre holdings are not large enough to permit them, individually or collectively, to have a monopoly of exhibition.

21. The Court erred in concluding that there was or would be under its decree adequate competition between theatres operated by the major defendants in any city.

22. The Court erred in concluding that certain theatres which had used the product of more than one distributor in the past could not operate on the product of one distributor in the future.

23. The Court erred in concluding that the illegalities and restraints found to exist in the industry did not lie in or result from the ownership of theatres by the major defendants.

24. The Court erred in concluding that total theatre divestiture would be injurious to the corporations concerned and would be damaging to the public.

25. The Court erred in concluding that such divestiture would not remedy the illegal practices found by it which had unreasonably restricted competition in the industry.

Wherefore, plaintiff prays that the final decree of the District Court be appropriately amended and corrected to include the relief referred to above as having been erroneously denied.

(S.) Wendell Berge, Assistant Attorney General;
(S.) Robert L. Wright, Special Assistant to the Attorney General.

Dated this 18 day of February, 1947.

[fol. 3922] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the United States District Court:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal herein and include in said transcript in the order given below the following papers, viz:

1. Amended and supplemental complaint filed November 14, 1940.

2. Answers to amended and supplemental complaint filed by all defendants.

3. Consent decree filed November 20, 1940, including Rules of Arbitration.

4. Official record of the stenographic minutes of the hearing before Judge Goddard with respect to entry of consent decree held on November 14, 1940.

5. Expediting certificate filed June 13, 1945.

6. Opinion of the expediting court rendered June 11, 1946.

7. The proposed judgments submitted by all parties.

8. Memorandum in re findings and decree dated December 31, 1946.

[fol. 3923] 9. Findings of fact and conclusions of law filed December 31, 1946.

10. Judgment of the court entered on December 31, 1946.

11. Motions to amend and clarify the findings and judgment filed by all defendants.

12. Order entered on February 11, 1947 with respect to motions to amend and clarify findings and judgment.

13. Official record of the stenographic minutes of the proceedings before the expediting court from October 8, 1945 through January 22, 1947.

14. All of the exhibits received in evidence on behalf of the plaintiff and the defendants.

15. Plaintiff's index of its exhibits.

16. Petition for appeal.

17. Assignment of errors and prayer for reversal.

18. Order allowing appeal.

19. Proof of service.

20. Statement required by Rule 12.

21. Citation.

22. Statement of jurisdiction.

23. This praecipe.

(S.) Wendell Berge, Assistant Atorney General;
(S.) Robert L. Wright, Special Assistant to the Attorney General.

Dated this 18 day of February, 1947.

[fols. 3924-3926] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL

In the above-entitled cause the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final order and decree of this Court in this cause entered on the 31st day of December, 1946, and having also made and filed its petition for appeal, assignment of errors and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided,

It is therefore ordered and adjudged,

That the appeal be and the same is hereby allowed as prayed for.

(S.) Augustus N. Hand, USCJ, Henry W. Goddard, USDJ, John Bright, USDJ.

Dated this 21st day of February, 1947.

[fol. 3927] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITIONS FOR APPEALS—Filed Februray 26, 1947

Loew's Incorporated, Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, RKO Midwest Corporation, Twentieth Century-Fox Film Corporation, National Theatres Corporation, Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation (sued herein as Vitagraph, Inc.), and Warner Bros. Circuit Management Corporation, defendants in the above-entitled cause, each considering itself aggrieved by certain of the Findings of Fact and Conclusions of Law, made and filed by this Court on December 31, 1946, and by the Judgment, Decree and [fol. 3928] Final Order of this Court likewise made and entered on December 31, 1946, and by the Order of this Court entered on February 11, 1947, denying a motion of these defendants to amend said Decree and said Conclusions of Law, do hereby severally pray an appeal therefrom to the Supreme Court of the United States.

Pursuant to Rule 12 of the Rules of the Supreme Court of the United States, these defendants severally present to this Court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain each of their appeals herein, and file herewith their several Assignments of Errors and their Prayers for Reversal.

Wherefore, these defendants severally pray that each of their appeals may be allowed, that the amount of their respective bonds be fixed by order, that a citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said Judgment, Decree and Final Order were based, be duly authenticated and sent to the Supreme Court of the United States under the Rules of said Court.

Dated, February 26, 1947.

Donovan Leisure Newton Lumbard & Irvine, Attorneys for Defendants Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, and RKO Midwest Corporation, By Thomas J. McFadden, a member of the firm, 2 Wall Street, New York, N. Y.

[fol. 3929] Joseph M. Proskauer, Robert W. Perkins, Attorneys for Defendants Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation and Warner Bros. Circuit Management Corporation, By Joseph M. Proskauer, 11 Broadway, New York, N. Y.

Davis Polk Wardwell Sunderland & Kiendl, J. Robert Rubin, Attorneys for Defendant Loew's Incorporated, By Theodore Kiendl, A Member of the Firm, 15 Broad Street, New York, N. Y.

Dwight, Harris, Koegel & Caskey, Attorneys for Defendants Twentieth Century-Fox Film Corporation and National Theatres Corporation, By John F. Caskey, A Member of the Firm, 100 Broadway, New York, N. Y.

[fol. 3930] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERRORS AND PRAYERS FOR REVERSAL—Filed February 26, 1947

Loew's Incorporated, Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, RKO Midwest Corpora-
[fol. 3931] tion, Twentieth Century-Fox Film Corporation, National Theatres Corporation, Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation (sued herein as Vitagraph, Inc.), and Warner Bros. Circuit Management Corporation, defendants in the above entitled cause, in connection with their several petitions for appeals to the Supreme Court of the United States, hereby severally assign error to the Findings of Fact, Conclusions of Law, Judgment, Final Order and Decree of the United States District Court for the Southern District of New York entered on December 31, 1946, and to the Order of said District Court entered on February 11, 1947, and say that there is manifest error in the entry of such Judgment, Final Order and Decree, and in the proceedings in this cause prior to, concurrent with, and subsequent

to the entry thereof, committed by the said District Court to the prejudice of each of the said defendants severally, in the following several particulars, to wit:

1

The Court erred in Section II, Paragraph 1 of the Decree, in enjoining the distributor-defendants, and each of them, as follows:

> "1. From granting any license in which minimum prices for admission to a theatre are fixed by the parties, either in writing or through a committee, or through arbitration, or upon the happening of any event or in any manner or by any means."

2

The Court erred in failing to conclude that a distributor-defendant has a lawful right under the Copyright Law and [fol. 3932] under the common law to agree with its licensee that the latter shall charge a price not less than that specified in the license agreement during the exhibition of the feature licensed, and erred in failing to permit a distributor-defendant to make such provisions in its license agreements with each licensee with whom it does business.

3

The Court erred in making its Finding No. 64 reading as follows:

> "64. The defendants' licenses are in effect price-fixing arrangements among all of the distributor-defendants, as well as between such defendants individually and their various exhibitors. Thus there was a general arrangement of fixing prices in which both the distributors and exhibitors were involved. The licenses required existing admission price schedules to be maintained under severe penalties for infraction. In the case of such exceptional features as "Gone With The Wind", "For Whom The Bell Tolls", "Wilson", and "Song of Bernadette", licensed for exhibition prior to general release and as to which the distributors were not satisfied with current prices, they would refuse to grant licenses unless the prices were raised."

4

The Court erred in making its Finding of Fact No. 65 reading as follows:

"65. The defendants granting film licenses have agreed with their licensees to a system which determines minimum admission prices in all theatres where feature motion pictures licensed by them are exhibited. In this way are controlled the prices to be charged [fol. 3933] for most of the feature motion pictures exhibited either by the defendants or by independents within the United States."

5

The Court erred in its Finding of Fact No. 66 in finding that these defendants or any of them have a definite interest in keeping up prices in any given territory in which they own theatres, and in finding that they or any of them safeguarded this interest by fixing minimum admission prices in their respective licenses when distributing films to exhibitors in those areas.

6

The Court erred in its Finding of Fact No. 66 in finding that there was a system which presupposed a fixing of prices by all parties concerned in all competitive areas.

7

The Court erred in its Finding of Fact No. 67 in finding that the agreements therein mentioned showed the intent of the defendants, who were parties thereto, to maintain admission prices at artificial levels.

8

The Court erred in its Finding of Fact No. 69 in finding that RKO, Loew's, Warner, Paramount and Fox, in granting and accepting licenses with minimum admission prices specified therein, have among themselves engaged in a national system to fix prices, and in finding that Columbia, Universal, and United Artists have participated in that system.

[fol. 3934] 9.

The Court erred in making its Finding of Fact No. 70 reading as follows:

"70. The distributor-defendants have acquiesced in the establishment of a price-fixing system and have conspired with one another to maintain prices."

10.

The Court erred in making its Finding of Fact No. 71 reading as follows:

"71. In agreeing to maintain a stipulated minimum admission price, each exhibitor thereby consents to the minimum price level at which it will compete against other licensees of the same distributor whether they exhibit on the same run or not. The total effect is that through the separate contracts between the distributor and its licensees a price structure is erected which regulates the licensees' ability to compete against one another in admission prices. Each licensee knows from the general uniformity of admission price practices that other licensees having theatres suitable for exhibition of a distributor's feature in the particular competitive area will also be restricted as to maintenance of minimum admission prices, and this acquiescence of the exhibitors in the distributor's control of price competition renders the whole a conspiracy between each distributor and its licensees. An effective system of price control in which the distributor and its licensees knowingly take part by entering into price-restricting contracts is thereby erected."

11

The Court erred in its Finding of Fact No. 72 in finding that the differentials in admission prices appearing in [fol. 3935] licenses of a particular feature in theatres exhibiting on different runs in the same competitive area were calculated or intended by the distributor-defendants, or any of them, to give prior run exhibitors as near a monopoly of the patronage as possible.

12

The Court erred in its Conclusion of Law No. 7(a) in concluding that the defendants therein named, or any of them, have violated the Act of Congress approved July 2, 1890 (26 Stat. 209; 15 U. S. C.), as amended, herein referred to as the Sherman Act, as stated in said conclusion of law, by:

"Acquiescing in the establishment of a price fixing system by conspiring with one another to maintain theatre admission prices."

13

The Court erred in its Conclusions of Law No. 8(a) and No. 8(b) in concluding that the defendants therein named, or any of them, have violated the Sherman Act, as stated in said conclusions of law, by:

"(a) Conspiring with each other to maintain a nationwide system of fixed minimum motion picture theatre admission prices;

(b) Agreeing individually with their respective licensees to fix minimum motion picture theatre admission prices."

14

The Court erred in failing to conclude that a distributor-defendant had a lawful right under the Copyright Law [fol. 3936] and under the common law to agree with its licensee that the latter shall charge an admission price not less than that specified in the license agreement during the exhibition of the feature as a roadshow.

15

The Court erred in making its Finding of Fact No. 79 reading as follows:

"79. The major defendants have acquiesced in and forwarded a uniform system of clearances and in numerous instances have maintained unreasonable clearances to the prejudice of independents."

16

The Court erred in making its Finding of Fact No. 81 reading as follows:

> "81. The distributor-defendants have acted in concert in the formation of a uniform system of clearance for the theatres to which they license their films and the exhibitor-defendants have assisted in creating and have acquiesced in this system."

17

The Court erred in its Finding of Fact No. 82 in finding defendants or any of them "acted in concert in their grant of run and clearance."

18

The Court erred in Section II, Paragraph 2 of the Decree in enjoining each of the distributor-defendants "from agreeing with each other or with any exhibitors or distributors to maintain a system of clearances."

[fol. 3937] 19.

The Court erred in Section II, Paragraph 4 of the Decree in decreeing that

> "Whenever any clearance provision is attacked as not legal under the provisions of this decree, the burden shall be upon the distributor to sustain the legality thereof."

20.

The Court erred in making its Finding of Fact No. 84 reading as follows:

> "84. Both independent distributors and exhibitors, when attempting to bargain with the defendants, have been met by a fixed scale of clearances, runs, and admission prices to which they have been obliged to conform if they wished to get their pictures shown upon satisfactory runs or were to compete in exhibition either with the defendant's theatre or theatres to which the latter had licensed their pictures."

21.

The Court erred in its Conclusions of Law No. 7 (b) and No. 8(c) in concluding that the defendants, or any of them,

have violated the Sherman Act, as stated in said conclusions of law, by conspiring with each other to maintain a nation-wide system of runs and clearances which is substantially uniform in or as to each local competitive area.

22.

The Court erred in its Conclusions of Law No. 9(c) and No. 9(d) in concluding that the exhibitor-defendants, or [fol. 3938] any of them, have violated the Sherman Act, as stated in said conclusions of law, by:

"(c) Conspiring with each other and with the distributor-defendants to fix substantially uniform minimum motion picture theatre admission prices, runs and clearances;

(d) Conspiring with the distributor-defendants to discriminate against independent competitors in fixng minimum admission prices, run, clearance and other license terms".

23.

The Court erred in its Finding of Fact No. 110 to the extent that it found that these defendants or any of them have discriminated against small independent exhibitors in favor of large affiliated and unaffiliated circuits.

24.

The Court erred in its Conclusion of Law No. 8(d) in concluding that the distributor-defendants, or any of them, have violated the Sherman Act, as stated in said conclusion of law, by:

"Agreeing individually with their respective licensees to grant discriminatory license privileges to theatres affiliated with other defendants and with large circuits as found in finding No. 110."

25.

The Court erred in its Finding of Fact No. 115 in finding that the joint interests therein referred to between an exhibitor-defendant in conjunction with independent, ex- [fol. 3939] hibitors enabled the parties to operate theatres collectively rather than competitively.

26.

The Court erred in its Finding of Fact No. 116 in finding that when theatres are jointly owned by a major defendant and an independent exhibitor it is evident that both joint owners wish to participate and are directly or indirectly participating in the business of exhibiting motion pictures and that the defendant thereby eliminates putative competition between itself and the other joint owner who otherwise would be in a position to operate theatres independently.

27.

The Court erred in its Conclusions of Law No. 9(a) and No. 9(b) in concluding that the exhibitor-defendants therein named, or any of them, have violated the Sherman Act, as stated in said conclusions of law, by:

"(a) Jointly operating motion picture theatres with each other and with independents through operating agreements or profit-sharing leases;

(b) Jointly owning motion picture theatres with each other and with independents through stock interests in theatre buildings."

28.

The Court erred in Section III, Paragraph (2) of the Decree in enjoining the exhibitor-defendants, or any of them, from continuing to perform existing agreements, therein referred to, with exhibitors not defendants herein.

[fol. 3940]

29.

The Court erred in Section III, Paragraph (5) of the Decree in enjoining the defendants or any of them

"From continuing to own or acquiring any beneficial interest in any theatre, whether in fee or shares of stock or otherwise, * * * in conjunction with an independent [meaning any former, present or putative motion picture theatre operator which is not owned or controlled by the defendant holding the interest in question,] where such interest shall be greater than five per cent unless such interest shall be ninety-five per cent or more."

30.

The Court erred in Section III, Paragraph (6) of the Decree in enjoining the defendants therein named, or any of them, from expanding their present theatre holdings in any manner whatsoever except as permitted in Section III, Paragraph 5 of the decree.

31.

The Court erred in denying Paragraph I of these defendants' motions to amend and modify the decree so as to make Paragraph (6) of Section III thereof read as follows:

> "'From expanding its present theatre holdings in any manner whatsoever, except as permitted in the preceding paragraph; or except for the purpose of acquiring theatres or interests therein in order to protect its investments, or in order to enter a competitive field, if such defendants shall show to the satisfaction of the Court, and the Court shall first find, that such acquisition will not unduly restrain competition in the [fol. 3941] exhibition of feature motion pictures. Reasonable notice of the intention to make any such acquisition shall be served upon the Attorney General and the plaintiff shall be given an opportunity to be heard with respect thereto before any such acquisition shall be approved by the Court.'"

32.

The Court erred in denying Paragraph 4 of the motion of these defendants to amend and modify Conclusion of Law 9(d) to read as follows:

> "Conspiring with the distributor defendants to receive discriminatory license privileges as found in Finding No. 110 above."

33.

The Court erred in not decreeing that any defendant might apply to the Court for permission to retain a given partial interest in a theatre or group of theatres upon a showing to and finding by the Court that the particular relationship did not or would not unreasonably restrain competition.

34.

The Court erred in decreeing in Section V of the Decree that the Consent Decree entered November 20, 1940, should be of no further force or effect, except insofar as it might be necessary to conclude arbitration proceedings now pending, and to liquidate in an orderly manner the financial obligations of the defendants and the American Arbitration Association, and in failing to permit the said Consent Decree to remain in effect as a final determination between the [fol. 3942] plaintiff and the defendants as to the matters therein set forth.

35.

The Court erred in failing to decree that disputes between one or more of these defendants and exhibitors arising under the Decree should be determined by arbitration under the Rules of Arbitration provided for in the Consent Decree, as the same might be modified by the order of the Court from time to time.

36.

The Court erred in denying and in failing to grant the motions made by the defendants and each of them to dismiss the petition and amended and supplemental complaint and to strike exhibits and evidence upon the grounds set forth in their respective motions appearing at pages 383-4, 503-526 and 2501 of the Record.

37.

The Court erred in so much of Finding of Fact No. 154 as states that there were illegalities and restraints.

38.

The Court erred in finding and concluding that these defendants or any of them violated the Sherman Act in the respects herein assigned as error.

39.

The Court erred in making and entering so much of the Decree as is herein appealed from.

[fol. 3943] Wherefore, each of these defendants severally prays that said Decree, Judgment and Orders be reversed,

modified or corrected and that an appropriate judgment be rendered herein.

Dated, February 26, 1947. Respectfully submitted: Donovan Leisure Newton Lumbard & Irvine, Attorneys for Defendants Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, and RKO Midwest Corporation, By Thomas J. McFadden A Member of the Firm 2 Wall Street, New York, N. Y.

Joseph M. Proskauer, Robert W. Perkins, Attorneys for Defendants Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation and Warner Bros. Circuit Management Corporation, By Joseph. M. Proskauer, 11 Broadway, New York, N. Y.

[fol. 3944] Davis Polk Wardwell Sunderland & Kiendl, J. Robert Rubin, Attorneys for Defendant Loew's Incorporated, By Theodore Kiendl A Member of the Firm 15 Broad Street, New York, N. Y.

Dwight, Harris, Koegel & Caskey, Attorneys for Defendants Twentieth Century-Fox Film Corporation and National Theatres Corporation, By John F. Caskey A Member of the Firm 100 Broadway, New York, N. Y.

[fol. 3945] In United States District Court

[Title omitted]

Order Allowing Appeals—Filed February 26, 1947

The defendants Loew's Incorporated, Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, RKO Midwest Corporation, Twentieth Century-Fox Film Corporation, National Theatres Corporation, Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation (sued herein as Vitagraph, Inc.), and Warner Bros. Circuit Management Corporation, having made and filed their petition severally praying for appeals to the Supreme

[fols. 3946-3949] Court of the United States from certain of the Findings of Fact and Conclusions of Law made and filed by the Court herein on December 31, 1946, and the Judgment, Decree and Final Order of this Court entered herein on December 31, 1946, and the Order of this Court entered on February 11, 1947, and having also filed their several Assignments of Errors and Prayers for Reversal, and their statement showing the jurisdiction of the Supreme Court of the United States to entertain such appeals, and having in all respects conformed to the statutes and rules in such cases made and provided, it is

Ordered and adjudged that the said appeals be and the same are hereby allowed as prayed for, and that each of said defendants severally give a bond with good and sufficient security in the sum of $2,000 that it, as appellant, will prosecute its appeal to effect and answer all costs if it fails to make its appeal good.

Dated February 26, 1947.

Augustus N. Hand, Circuit Judge, Henry W. Stoddard, District Judge, John Bright, District Judge.

[fol. 3950] In United States District Court

[Title omitted]

Petitions for Appeal—Filed February 26, 1947

Paramount Pictures, Inc., and Paramount Film Distributing Corporation, defendants in the above-entitled cause, each considering itself aggrieved by certain of the Findings of Fact and Conclusions of Law, made and filed by this Court on December 31, 1946, and by the judgment, decree and final order of this Court likewise made and entered on December 31, 1946, and by the order of this Court entered February 11, 1947 denying a motion of these defendants to amend said decree and said Conclusions of Law, [fol. 3951] do hereby severally pray an appeal therefrom to the Supreme Court of the United States.

Purusant to Rule 12 of the Rules of the Supreme Court of the United States, these defendants severally present to this Court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain each of their appeals herein, and file herewith their several Assignments of Errors and their Prayers for Reversal.

Wherefore these defendants severally pray that their appeals may be allowed, that the amount of their respective bonds be fixed by order, that a citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said judgment, decree and final order was based, be duly authenticated and sent to the Supreme Court of the United States under the rules of said Court.

Dated, February 26, 1947.

Simpson Thacher & Bartlett, Attorneys for Defendants Paramount Pictures, Inc. and Paramount Film Distributing Corporation, By Albert C. Bickfor a member of the firm, 120 Broadway, New York 5, N. Y.

[fol. 3952] IN UNITED STATES DISTRICT COURT

[Title omitted]

SEPARATE ASSIGNMENTS OF ERRORS AND PRAYERS FOR REVERSAL ON BEHALF OF THE "PARAMOUNT DEFENDANTS" (PARAMOUNT PICTURES, INC. AND PARAMOUNT FILM DISTRIBUTING CORPORATION)—Filed February 26, 1947

Paramount Pictures, Inc. and Paramount Film Distributing Corporation, defendants in the above entitled case in [fol. 3953] connection with their petitions for appeal to the Supreme Court of the United States, hereby assign error to the Findings of Fact, Conclusions of Law, Judgment, final order and decree of the United States District Court for the Southern District of New York entered on December 31, 1946, and to the order entered on February 11, 1947, and say that there is manifest error in the entry of such judgment, final order and decree, and in the proceedings in this cause prior to, concurrent with, and subsequent to the entry thereof, committed by the District Court to the prejudice of each of the said defendants in the following several particulars:

1.

The Court erred in Section II, Paragraph 1 of the decree in enjoining these defendants, and each of them, as follows:

"1. From granting any license in which minimum prices for admission to a theatre are fixed by the

parties, either in writing or through a committee, or through arbitration, or upon the happening of any event or in any manner or by any means".

2.

The Court erred in failing to find and conclude that these defendants have a lawful right under the Copyright Law and under the common law to agree with their licensees that the latter shall charge an admission price not less than that specified in the license agreement during the exhibition of the feature licensed, and erred in failing to permit them to make such provisions in their license agreements with each licensee.

[fol. 3954]

3.

The Court erred as to these defendants in making its Finding of Fact No. 64 reading in part as follows:

"64. The defendants' licenses are in effect price-fixing arrangements among all of the distributor-defendants, as well as between such defendants individually and their various exhibitors. Thus there was a general arrangement of fixing prices in which both the distributors and exhibitors were involved. The licenses required existing admission price schedules to be maintained under severe penalties for infraction. In the case of such exceptional features as "Gone With The Wind", "For Whom The Bell Tolls", "Wilson", and "Song of Bernadette", licensed for exhibition prior to general release and as to which the distributors were not satisfied with current prices, they would refuse to grant licenses unless the prices were raised".

4.

The Court erred as to these defendants in making its Finding of Fact No. 65 reading as follows:

"65. The defendants granting film licenses have agreed with their licensees to a system which determines minimum admission prices in all theatres where feature motion pictures licensed by them are exhibited. In this way are controlled the prices to be charged for most of the feature motion pictures exhibited either by the defendants or by independents within the United States."

5.

The Court erred in its Finding of Fact No. 66 in finding that these defendants or either of them have a definite [fol. 3955] interest in keeping up prices in any given territory in which Paramount Pictures, Inc. own theatres, which interest was safeguarded by fixing minimum admission prices in its respective licenses when distributing films to exhibitors in those areas.

6.

The Court erred in its Finding of Fact No. 66 in finding that either of these defendants was a party to any system which presupposed a fixing of prices by all parties concerned in all competitive areas.

7.

The Court erred in finding that there was any admission price fixing system.

8.

The Court erred in its Finding of Fact No. 67 in finding that operating agreements made by Paramount Pictures, Inc. as exhibitor with one or more other defendants as exhibitors, or with independent exhibitors, for the joint operation of certain theatres, which agreements provided for minimum admission prices to be charged at such theatres, showed the intent of these defendants or either of them to maintain admission prices at artificial levels.

9.

The Court erred in finding that the Paramount defendants, or either of them, in granting and accepting licenses with minimum admission prices specified therein, have engaged in a system to fix prices.

[fol. 3956]

10.

The Court erred, as to these defendants, in finding, in its Finding of Fact No. 70 that they, or either of them have acquiesced in the establishment of a price-fixing system and have conspired with any other defendant to maintain prices.

11.

The Court erred, as to these defendants, in making its Finding of Fact No. 71 reading as follows:

> "71. In agreeing to maintain a stipulated minimum admission price, each exhibitor thereby consents to the minimum price level at which it will compete against other licensees of the same distributor whether they exhibit on the same run or not. The total effect is that through the separate contracts between the distributor and its licensees a price structure is erected which regulates the licensees' ability to compete against one another in admission prices. Each licensee knows from the general uniformity of admission price practices that other licensees having theatres suitable for exhibition of a distributor's feature in the particular competitive area will also be restricted as to maintenance of minimum admission prices, and this acquiescence of the exhibitors in the distributor's control of price competition renders the whole a conspiracy between each distributor and its licensees. An effective system of price control in which the distributor and its licensees knowingly take part by entering into price-restricting contracts is thereby erected."

12.

The Court erred, as to these defendants, in its Finding of Fact No. 72 in finding that the differentials in admission [fol. 3957] prices appearing in licenses of a particular feature in theatres exhibiting on different runs in the same competitive area were calculated or intended by these defendants or either of them as distributor, to give prior run exhibitors as near a monopoly of the patronage as possible.

13

The Court erred in its Conclusion of Law 7(a) in concluding that these defendants or either of them have violated the Sherman Act, as stated in said conclusion of law, by:

> Acquiescing in the establishment of a price fixing system by conspiring with any other defendant to maintain theatre admission prices.

14

The Court erred in its Conclusions of Law 8(a) and 8(b) in concluding that these defendants, or either of them, have violated the Sherman Act, as stated in said conclusion of law, by:

(a) Conspiring with any other defendant to maintain a nationwide system of fixed minimum motion picture theatre admission prices;

(b) Agreeing individually with their respective licensees to fix minimum motion picture theatre admission prices.

15

The Court erred in failing to conclude that each of these defendants had a lawful right under the Copyright Law and under the common law to agree with each of its licensees [fol. 3958] that the latter shall charge an admission price not less than that specified in the license agreement during the exhibition of a feature as a roadshow.

16

The Court erred as to these defendants in making its Finding of Fact No. 79 reading as follows:

"79. The major defendants have acquiesced in and forwarded a uniform system of clearances and in numerous instances have maintained unreasonable clearances to the prejudice of independents."

17

The Court erred as to these defendants in making its Finding of Fact No. 81 reading as follows:

"81. The distributor-defendants have acted in concert in the formation of a uniform system of clearance for the theatres to which they license their films and the exhibitor-defendants have assisted in creating and have acquiesced in this system."

18

The Court erred in its Finding of Fact No. 82 in finding that these defendants or either of them acted in concert

with any other defendant in their respective grants of run and clearance.

19

The Court erred in Section II, Paragraph 2 of the Decree in enjoining these defendants, or either of them, from agreeing with any exhibitors or distributors to maintain a system of clearances.

[fol. 3959]

20

The Court erred in Section II, Paragraph 4 of the decree in enjoining these defendants, or either of them, as follows:

> "4. From granting or enforcing any clearance against theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted. Whenever any clearance provision is attacked as not legal under the provisions of this decree, the burden shall be upon the distributor to sustain the legality thereof."

21

The Court erred as to these defendants in making its Finding of Fact No. 84 reading as follows:

> "84. Both independent distributors and exhibitors, when attempting to bargain with the defendants, have been met by a fixed scale of clearances, runs, and admission prices to which they have been obliged to conform if they wished to get their pictures shown upon satisfactory runs or were to compete in exhibition either with the defendants' theatres or with theatres to which the latter had licensed their pictures."

22

The Court erred in its Conclusion of Law No. 7(b) in concluding that these defendants, or either of them, have violated the Sherman Act, as stated in said conclusion of law, by;

> [fol. 3960] Conspiring with any other defendant to maintain a nationwide system of runs and clearances which is substantially uniform in each local competitive area.

23

The Court erred in its Conclusion of Law No. 8(c) in concluding that these defendants, or either of them, have violated the Sherman Act, as stated in said conclusion of law, by:

> Conspiring with any other defendant to maintain a nationwide system of runs and clearances which is substantially uniform as to each local competitive area.

24

The Court erred in its Conclusions of Law No. 9(c) and 9(d) in concluding that Paramount Pictures, Inc., violated the Sherman Act, as stated in said conclusion of law, by

> Conspiring with any other defendant to fix substantially uniform minimum motion picture theatre admission prices, runs and clearances;
>
> Conspiring with the distributor-defendants to discriminate against independent competitors in fixing minimum admission prices, run, clearance and other license terms.

25

The Court erred in Section II, Paragraph 7 of the decree in enjoining these defendants, or either of them, from performing or entering into any license in which the right to exhibit one feature is conditioned upon the licensee's taking one or more other features.

[fol. 3961]

26

The Court erred in Section II, Paragraph 7 of the decree, in decreeing that these defendants, or either of them, to the extent that any of their features have not been trade shown prior to the granting of the license for more than a single feature, should give the licensee the right to reject twenty per cent of such features not trade shown prior to the granting of the license.

27

The Court erred in Section II, Paragraph 8 of the decree in enjoining these defendants from licensing in the future any feature for exhibition in any theatre not its own, in any

manner except by the method and in the manner therein prescribed.

28.

The Court erred in its Conclusion of Law 8(g) in concluding that these defendants, or either of them, had violated the Sherman Act, as stated in said conclusion of law, by individually conditioning the offer of a license for one or more copyrighted films upon the acceptance by the licensee of one or more other copyrighted films.

29

The Court erred in its Finding of Fact No. 110 to the extent that it found that these defendants, or either of them, have discriminated against small independent exhibitors in favor of large affiliated and unaffiliated circuits.

[fol. 3962] 30

The Court erred in its Conclusion of Law 8(d) in concluding that these defendants, or either of them, have violated the Sherman Act, as stated in said conclusion of law, by:

> "Agreeing individually with their respective licensees to grant discriminatory license privileges to theatres affiliated with other defendants and with large circuits, as found in Finding of Fact No. 110."

31

The Court erred in its Finding of Fact No. 115 in finding that the theatre interests therein referred to between defendant Paramount Pictures, Inc. and an independent exhibitor enabled the parties to operate theatres collectively rather than competitively.

32

The Court erred in its Finding of Fact No. 116 in finding that when theatres are jointly owned by defendant Paramount Pictures, Inc. and an independent exhibitor it is evident that both joint owners wish to participate and are directly or indirectly participating in the business of exhibiting motion pictures and that defendant Paramount Pictures, Inc. thereby eliminates putative competition between

itself and the other joint owner who otherwise would be in a position to operate theatres independently.

33

The Court erred in so much of its Conclusions of Law No. 9(a) and 9(b) as conclude that defendant Paramount [fol. 3963] Pictures, Inc. violated the Sherman Act, as stated in said conclusion of law, by:

> Jointly operating motion picture theatres with any other defendant and with independents through operating agreements or profit-sharing leases;
>
> Jointly owning motion picture theatres with any other defendant and independents through stock interests in theatre buildings.

34

The Court erred in Section III, Paragraph (5) of the decree in enjoining defendant Paramount Pictures, Inc. "From continuing to own or acquiring any beneficial interest in any theatre, whether in fee or shares of stock or otherwise, * * * in conjunction with an independent [meaning any former, present or putative motion picture theatre operator which is not owned or controlled by the defendant holding the interest in question,] where such interest shall be greater than five per cent unless such interest shall be ninety-five per cent or more. The existing relationships which violate this provision shall be terminated within two years. The relationships between the defendants and independents which violate this provision shall be terminated by a sale to, or purchase from the co-owner or co-owners, or by a sale to a party not one of the other defendants. In dissolving relationships * * * between defendants and independents which violate this provision, one defendant may acquire the interest of * * * [an] independent if such defendant desiring to acquire such interest shall show to the satisfaction of the court, and the court shall first find, that such acquisition will not unduly restrain competition in the exhibition of feature motion pictures."

[fol. 3964] 35

The Court erred in Section III, Paragraph (6) of the decree in enjoining defendant Paramount Pictures, Inc.

from expanding its present theatre holdings in any manner whatsoever except as permitted in Section III, Paragraph 5 of the decree.

36

The Court erred in failing to decree that defendant Paramount Pictures, Inc. might expand its present theatre holdings for the purpose of acquiring interests in theatres in order to protect its investments or in order to enter a competitive field, upon a showing as to each new theatre that such acquisition would not unduly restrain competition in the exhibition of feature motion pictures in the competitive area where such theatre was to be acquired.

37

The Court erred in denying Paragraph I of these defendants' motion to amend and modify the decree so as to make Paragraph (6) of Section III thereof read as follows:

> "'From expanding its present theatre holdings in any manner whatsoever, except as permitted in the preceding paragraph; or for the purpose of acquiring theatres of interests therein in order to protect its investments, or in order to enter a competitive field, if such defendant shall show to the satisfaction of the Court, and the Court shall first find, that such acquisition will not unduly restrain competition in the exhibition of feature motion pictures. Reasonable notice of the intention to make any such acquisition shall be [fol. 3965] served upon the Attorney General and the plaintiff shall be given an opportunity to be heard with respect thereto before any such acquisition shall be approved by the Court.'"

38

The Court erred in denying Paragraph 4 of the motion of these defendants to amend and modify Conclusion of Law 9(d) to read as follows:

> "'Conspiring with the distributor defendants to receive discriminatory license privileges as found in Finding No. 110 above.'"

39

The Court erred in not specifically decreeing that defendant Paramount Pictures, Inc. might apply to the Court for permission to retain any presently owned partial interest in a theatre or group of theatres upon a showing to and finding by the Court that the retention of such partial interest did not or would not unreasonably restrain competition.

40

The Court erred in failing and refusing to decree as follows:

> "In any case where it is shown that a joint relationship between an exhibitor-defendant or a subsidiary thereof and an independent exhibitor resulted from the sale, transfer or other disposition by the exhibitor-defendant or a subsidiary thereof (or by a Trustee in Bankruptcy or other legal representative of either of them) of the partial interest to such independent exhibitor, the exhibitor-defendant may [fol. 3966] apply to this Court for permission to continue such relationship to the extent to which and in the places in which the parties to the joint relationship were not in competition at the time of such sale, transfer or other disposition of such partial interest."

41

The Court erred in decreeing in Section V of the decree that the consent decree entered November 20, 1940, should be of no further force or effect, except insofar as it might be necessary to conclude arbitration proceedings now pending, and to liquidate in an orderly manner the financial obligations of the defendants and the American Arbitration Association, and in failing to permit the said consent decree to remain in effect as a final determination between the plaintiff and the defendants as to the matters therein set forth.

42

The Court erred in failing to decree that disputes between one or more of the defendants and exhibitors arising under the decree should be determined by arbitration under the Rules of Arbitration provided for in the consent

decree, as the same might be modified by the order of the Court from time to time.

43

The Court erred in denying the motions made by these defendants and each of them to dismiss the petition and amended and supplemental complaint and to strike exhibits and evidence upon the grounds set forth in their respective motions appearing at pages 383-4, 503-526 and 2501 of the Record.

44

The Court erred in so much of Finding of Fact No. 154 as states that there were illegalities and restraints in [fol. 3967] admission price fixing, non-competitive granting of runs and clearances and certain discriminations among licensees between defendants and independents.

45

The Court erred in finding that these defendants or any of them violated the Act of Congress approved July 2, 1890 (26 Stat. 209; 15 U. S. C.), as amended, commonly known as the Sherman Act.

46

The Court erred in making and entering the decree appealed from.

47

The Court erred in Section III paragraph (2) of the decree in enjoining Paramount Pictures Inc. from continuing to perform existing agreements therein referred to with exhibitors not parties to this action.

Wherefore each of these defendants, severally prays that said decree, judgment and final order be reversed and a judgment rendered in favor of each of them.

Respectfully submitted, Simpson Thacher & Bartlett, Attorneys for Defendants Paramount Pictures, Inc. and Paramount Film Distributing Corporation, by Albert C. Bickford, a member of the firm, 120 Broadway, New York 5, N. Y.

Dated: New York, N. Y., February 26, 1947.

[fol. 3968] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEALS OF THE PARAMOUNT DEFENDANTS—Filed February 26, 1947

The defendants Paramount Pictures, Inc., and Paramount Film Distributing Corporation, having made and filed their petition severally praying for an appeal to the Supreme Court of the United States from certain of the Findings of Fact and Conclusions of Law made and filed by the Court herein on December 31, 1946, and the judgment, decree and final order of this Court entered herein on December 31, 1946, and the order of this Court entered on February 16, 1947, and having also filed their several Assignments of Errors and Prayers for Reversal, and [fols. 3969-3975] their statement (in conjunction with other defendants) showing the jurisdiction of the Supreme Court of the United States to entertain such appeals, and having in all respects conformed to the statutes and rules in such cases made and provided, it is

Ordered and adjudged that the said appeals be and the same are hereby allowed as prayed for, and that each of said defendants severally give a bond with good and sufficient security in the sum of $2,000 that it, as appellant, will prosecute its appeal to effect and answer all costs if it fails to make its appeal good.

Dated, February 26, 1947.

Augustus N. Hand, Circuit Judge; Henry W. Stoddard, District Judge; John Bright, District Judge.

[fol. 3976] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed February 6, 1947

Columbia Pictures Corporation and Columbia Pictures of Louisiana, Inc., defendants in the above entitled cause, considering themselves aggrieved by (1) the findings and conclusions filed by the Court on December 31, 1946, and (2) the final order and decree of this Court entered on December 31, 1946, do hereby pray an appeal to the Supreme

Court of the United States. Pursuant to Rule 12 of the Rules [fol. 3977] of the Supreme Court, the defendants present to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the defendants consider the action of the Court erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Defendants pray that their appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said final order and decree was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

Schwartz & Frohlich, By Louis D. Frohlich, Member of the firm, 1450 Broadway, New York City, 18, N. Y., Counsel for Defendants, Columbia Pictures Corporation and Columbia Pictures of Louisiana, Inc.

Dated this 4th day of February, 1947.

[fol. 3978] In United States District Court

[Title omitted]

Assignment of Errors and Prayer for Reversal—Filed February 6, 1947

Columbia Pictures Corporation and Columbia Pictures of Louisiana, Inc., defendants in the above entitled cause, in connection with their petition for appeal to the Supreme Court of the United States, hereby assign error to the final Order and Decree of said District Court entered on Decem-
[fol. 3979] ber 31, 1946, in the above entitled cause, and to the Findings of Fact and Conclusions of Law filed on December 31, 1946, and say that in the entry of the final order and decree and in the filing of said findings and conclusions the District Court committed error to the prejudice of the said defendants in the following particulars:

I

As to the Findings and Conclusions

1. The Court erred in including in Finding No. 1 the following paragraph:

"Block-booking—The practice of licensing, or offering for license, one feature, or group of features, upon condition that the exhibitor shall also license another feature or group of features released by the distributor during a given period."

2. The Court erred in making Finding No. 93, which reads as follows:

"93. Block-booking, when the license of any feature is conditional upon taking of other features, is a system which prevents competitors from bidding for single features on their individual merits."

3. The Court erred in including in Finding No. 94 the following portion:

"94. * * * In many cases licenses for all the films had to be accepted in order to obtain any, though sometimes the exhibitor was given a right of subsequent cancellation for a certain number of pictures. Because of complaints of block booking and blind-selling based upon the supposed unfairness of contracts which often includes pictures the inferior qual- [fol. 3980] ity of which could not be known, Section III and IV of the consent decree required the five consenting distributors to trade-show their films before offering them for license and limited the number which might be included in any contract to five."

4. The Court erred in making Finding No. 97, which reads as follows:

"97. Blind-selling is a practice whereby a distributor licenses a feature before the exhibitor is afforded an opportunity to view it."

And in failing to add as requested by defendants the following:

"1. In the early stages of the industry producers sold their pictures by the State Right method, both

in the United States and throughout the world (1732-3). This was an uncertain operation and failed to give satisfactory revenue to the producers, and in the early 1920s the producers of pictures began to sell their pictures in blocks of a season's product in advance (1733-4). Columbia embarked on that system of distribution in 1929 and was compelled thereby to finance itself to the extent of a million dollars (1734-5). It has sold its pictures continuously since then in blocks of all or part of the season's product in advance (1735). All of the other distributing companies have sold their pictures in the same manner, except that the defendants, RKO, MGM, Twentieth Century-Fox, Warner and Paramount began to sell their pictures in blocks of five on the entry of the consent decree herein.

2. The exhibitors know fairly accurately what they purchase from Columbia when they buy its pictures in block at the beginning of each season. They know it [fol. 3981] from the history of the company, the type of releases it has, and because Columbia describes as adequately as possible its prospective pictures by title, by story and by stars (1736-7).

3. There is no such thing as blind selling (1812), and there is no proof in this record that any exhibitor in entering into a block booking contract with Columbia was misled with respect to the product or that he did not know what kind of pictures he was getting or that he was at any disadvantage by reason of such blockbooking contract (1736, 1759, 1812-3), and pictures are sold today as they always have been, on the star, the story, the director and similar elements (1630-3).

4. During the period in question every agreement or contract by Columbia granting an exhibition right was in the nature of a limited exclusive right granted to a theatre owner—first the physical possession of a positive print, a tangible piece of property and second, the intangible right of license to publicly perform in his theatre the copyrighted subject contained in the positive print with no right to assign that performing

right to anybody else; that the right was limited to exhibit or publicly perform said copyrighted work only in the particular theatre or theatres listed in the contract for the specific number of days included in the contract, with no right to lease or sell or in any way dispose of any part of the tangible property or print to anybody else, and with a further condition that when the public performance was completed under the contract, the print was to be returned to Columbia's exchange.

5. During the period in question Columbia did not sell or part with the title to any of the positive prints of any of the motion pictures distributed by it to any [fol. 3982] of the exhibitors exhibiting its motion pictures in the United States of America.

6. During the period in question Columbia, through its selling or licensing organization, solicited the various exhibitors of motion picture photoplays, in the United States of America, and tried to secure from said exhibitors exhibition license agreements under the terms of which said exhibitors would agree to exhibit all of the Columbia photoplays or a part of the Columbia photoplays, or any part of the Columbia photoplays that were available for exhibition for some run in said exhibitors' theatres.

7. During the period in question Columbia did not condition the licensing of any photoplay in any exhibitors' theatre upon that exhibitor's agreement to license other Columbia photoplays for exhibition in said theatre.

8. During the period in question Columbia licensed the exhibition of its pictures both to the so-called affiliated theatres and independent theatres on flat rental terms, percentage terms and guarantee against percentage terms.

9. During the period in question Columbia licensed its pictures for exhibition to both affiliated and independent theatres on so-called 'selective' contracts and did not discriminate in favor of affiliated against independent theatres, and granted not only the same

rights of selection to both affiliated and independent theatres but granted greater selectivity to the independents.

10. During each of the years in question in excess of 600 feature photoplays were generally released in the United States of America, exclusive of so-called foreign made films. That Columbia releases during [fol. 3983] the same period equalled a comparatively small number of feature photoplays generally released in the United States each year including top features, features of lesser merit, Westerns and shorts; that at no time during said period did Columbia monopolize or attempt to monopolize or had it the power to monopolize the distribution market in the United States of America, or any section thereof."

5. The Court erred in including in Finding No. 154 that portion thereof which reads as follows:

"The illegalities and restraints herein found are * * * in block-booking."

6. The Court erred in including in Finding No. 156 the words "block-booking" as one of the practices which have been found unreasonable to restrict competition, and in failing to add as requested by defendants the following:

"22. The course of conduct of the defendant, Columbia, during the period in question, was to license its product for first run or any run open to independent exhibitors either operating in competition with the defendant exhibitors or not in competition, including the key cities in the United States having a population of 100,000 or over, wherever independent exhibitors operated theatres.

23. In conducting its business of distributing motion pictures and making exhibition license agreements during the period in question, Columbia conducted all its negotiations and made all its contracts, whether with independents or affiliated exhibitors, or unaffiliated circuits, without any intent, purpose or effect to bring about a monopoly in the distribution or exhibition business, or to unduly restrain Inter- [fol. 3984] state Commerce, but merely licensed its

product in the market the way it found it, and with the sole purpose and intent of receiving the maximum amount of revenue legitimately possible for all pictures distributed by it. • • •

25. Columbia owns no theatres and may not look to such sources for its market. Other companies which sell their pictures by block booking and which own no theatres are Universal, Republic, Monogram and Producer's Releasing Corporation.

26. The method of selling pictures by block booking eliminates to some extent the hazard and gamble involved in producing pictures. In 1928-9 Columbia spent $1,632,300 in production; in 1944-5 it spent (estimated), $16,689,700 (Exhibit C-2). It could not have increased its budget and spent these moneys unless it had the assurance of a ready market which only block booking has given it, and block booking is vital and necessary to Columbia for its continued existence as a producer (1737). To sell pictures singly Columbia would have to change its whole financial base, it would have to obtain moneys by way of refinancing or stock issue to sink into an inventory and keep the same on the shelf for a period of time; whereas block booking enables Columbia to turn over its pictures rapidly and to put its money back into the production of pictures quickly (1737). To sell pictures singly means to freeze Columbia's capital so that it would require more capital with which to operate, and that Columbia could not very well do (1754).

27. If Columbia has to sell pictures singly it will have to go through many more sales campaigns each year and increase its personnel, all at a substantial increase in overhead (1749-50). The exhibitors [fol. 3985] throughout the country generally have accepted block booking as an advantageous form of purchasing pictures and they desire to continue to purchase their pictures by block booking, as it gives them an assurance of product (1737, 1760, 2018); and exhibitors ever since the Consent Decree have demanded the restoration of block booking with respect to the defendants, MGM, RKO, Twentieth Century-Fox, Warner and Paramount and have voiced

great dissatisfaction in their conventions and meetings with the sale of pictures in small blocks or five or less (1761-3, 1789-91). There is no proof in this record that block booking violates the Sherman Act or that it is in restraints of trade or commerce.

28. Columbia and Universal under their respective contracts (2019) give a substantial degree of selectivity to their exhibitors when they sell their pictures in block (2017-8) and they give a greater degree of selectivity to the independents than to the affiliated exhibitors (1750). In this manner the exhibitor is protected against having bad pictures foisted upon him.

29. Columbia gives film rental adjustments to all of its exhibitor customers, and in fact, gives greater adjustments to independents than it does to affiliates (1757).

30. A great deal of Columbia's product is sold to the great mass of theatres in small towns on double features (1758).

31. Block booking has been a common method of selling pictures; it reduces selling expenses, but does not freeze pictures and inventories, and keeps them moving off the shelves as rapidly as they are produced; [fol. 3986] it creates a ready market for the producers and enables them to invest their capital with some reasonable hope of recoupment; and is a form of selling which the exhibitors desire to continue, as it assures them a ready market (2018) and relieves them of the burden, time and expense of making individual deals for each picture which they exhibit. There is no proof in this record that any exhibitor was ever hurt or injured in his business or property by reason of block booking.

32. No exhibitor took the stand and testified with respect to block booking.

33. The abolition of block booking in this industry places Columbia at an economic disadvantage as against all other producers of motion pictures who own theatres, because the defendants who own theatres have a ready market for their pictures and may to some extent reduce the gamble and hazard of production,

whereas defendant, Columbia, and other producers similarly situated have no ready market, so that in effect the abolition of block booking sought by the Government is a plain case of discrimination in favor of the defendants herein who own their own theatres, and far from freeing the market for competition, the net result will be just the opposite.

34. Block booking has been found to be a perfectly legal practice by the courts in *Westway Theatres, Inc.* v. *Twentieth Century-Fox Company, Federal Trade Commission* v. *Paramount*, and *United States* v. *Crescent* and there is no decision by the Supreme Court which has ever condemned it."

7. The Court erred in including in its Conclusion of Law No. 8 the following portion:

[fol. 3987] "(g) Individually conditioning the offer of a license for one or more copyrighted films upon the acceptance by the licensee of one or more other copyrighted films, except in the case of the United Artists Corporation;"

8. The Court erred in making its Conclusion of Law No. 11, which reads as follows:

"11. Block-booking as hereinabove defined, violates the Sherman Act."

II

As to Final Order and Decree

9. The Court erred in including in the final order and decree entered December 31, 1948, and more particularly in Section II thereof, paragraphs 7, 8 and 9, reading as follows:

"7. From performing or entering into any license in which the right to exhibit one feature is conditioned upon the licensee's taking one or more other features. To the extent that any of the features have not been trade shown prior to the granting of the license for more than a single feature, the licensee shall be given by the licensor the right to reject twenty per cent of such features not trade shown prior to the granting of the license, such right of rejection to be exercised in

the order of release within ten days after there has been an opportunity afforded to the licensee to inspect the feature.

8. From licensing in the future any feature for exhibition in any theatre, not its own, in any manner except the following:

[fol. 3988] (a) A license to exhibit each feature released for public exhibition in any competitive area shall be offered to the operator of each theatre in such area who desires to exhibit it on some run [other than that upon which such feature is to be exhibited in the theatre of the licensor] selected by such operator, and upon uniform terms;

(b) Each license shall be granted solely upon the merits and without discrimination in favor of affiliates, old customers or others;

(c) Where a run is desired, or is to be offered, upon terms which exclude simultaneous exhibition in competing theatres, the distributor shall notify, not less than thirty days in advance of the date when bids will be received, all exhibitors in the competitive area, offering to license the features upon one or more runs, and in such offer shall state the amount of a flat rental as the minimum for such license for a specified number of days of exhibition, the time when the exhibition is to commence and the availability and clearance, if any, which will be granted for each such run. Within fifteen days after receiving such notice, any exhibitor in such competitive area may bid for such license, and in his bid shall state what run such exhibitor desires and what he is willing to pay for such feature, which statement may specify a flat rental, or a percentage of gross receipts, or both, or any other form of rental, and shall also specify what clearance such exhibitor is willing to accept, the time and days when such exhibitor desires to exhibit it, and any other offers which such exhibitor may care to make. The distributor may reject all offers made for any such feature, but in the event of the acceptance of any, the distribu-

tor shall grant such license upon the run bid for [fol. 3989] to the highest responsible bidder, having a theatre of a size, location and equipment adequate to yield a reasonable return to the licensor. The method of licensing specified in this subdivision shall not be required in areas where there is no competition among theatres or in run, or in which there is no offer made by any exhibitor within the time above mentioned. The words 'exclude simultaneous exhibition' shall be held to mean the exhibition of a specified run in one theatre with clearance over other theatres in the competitive area. The words 'competitive area' shall refer to the territory occupied by more than one theatre in which it may fairly and reasonably be said that such theatres compete with each other for the exhibition of features on any run.

(d) Each license shall be offered and taken theatre by theatre and picture by picture.

(e) A theatre is not a defendant's own theatre unless it owns therein a legal or equitable interest of ninety-five per cent or more, either directly or through affiliates or subsidiaries.

9. From arbitrarily refusing the demand of an exhibitor, who operates a theatre in competition with another theatre not owned or operated by a defendant distributor, or its affiliate or subsidiary, made by registered mail, addressed to the home office of the distributor, to license a feature to him for exhibition on a run selected by the exhibitor, instead of licensing it to another exhibitor for exhibition in his competing theatre on such run. Such demand shall be deemed to have been refused either upon the receipt by the exhibitor of a refusal in writing or upon the expiration of ten days after the receipt of the exhibitor's demand."

[fol. 3990] Wherefore, defendants pray that the action of the District Court in making the findings and conclusions heretofore set forth and in failing to add the matter heretofore set forth submitted by defendant, and the action of

the District Court in including in the final order and decree of December 31, 1946, the paragraphs hereinbefore set forth, may be held erroneous and said decree accordingly reversed and the cause remanded for the elimination of the aforesaid findings and conclusions and the elimination of said paragraphs in the decree, and for such other and fit relief as the Court may deem just and proper.

Schwartz & Frohlich, by Louis D. Frohlich, 1450 Broadway, New York City 18, N. Y.; Counsel for Defendants, Columbia.

Dated this 4th day of February, 1947.

[fol. 3991] In United States District Court

[Title omitted]

Order Allowing Appeal—Filed February 6, 1947

In the above entitled cause defendants, Columbia Pictures Corporation and Columbia Pictures of Louisiana, Inc., having made and filed their petition praying an appeal to the Supreme Court of the United States from the findings and conclusions filed by the Court on December 31, 1946, and the final order and decree entered on December 31, 1946, [fol. 3992] and having also filed their assignment of errors and prayer for reversal and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided, it is therefore

Ordered and adjudged that the appeal be and the same is hereby allowed as prayed for, and that said defendants give a bond with good and sufficient security in the sum of $2,000, that they as appellants shall prosecute their appeal to effect and answer all costs if they fail to make their appeal good.

Dated this 6th day of February, 1947.

Augustus N. Hand, Circuit Judge; Henry W. Goddard, District Judge; John Bright, District Judge.

[fol. 3993] Citation in usual form. Filed Feb. 6, 1947. Omitted in printing.

[fols. 3994-3995] Bond on appeal for $2,000 approved and filed Feb. 6, 1947, omitted in printing.

[fol. 3996] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR RECORD

To the Clerk of the United States District Court:

In connection with the appeal allowed Columbia Pictures Corporation and Columbia Pictures of Louisiana, Inc. on February 6, 1947, in the above entitled case, please prepare a transcript of the record in the above entitled cause in the matter of the appeal herein, and include in said transcript in the order given below the following papers, viz:

1. Amended and Supplemental Complaint.

2. Answers to the amended and supplemental complaint of the following defendants:

Columbia Pictures Corporation and Columbia Pictures of [fol. 3997] Louisiana, Inc.; Paramount Pictures, Inc.; Loew's Incorporated; R.K.O. Radio Pictures, Inc.; Warner Bros. Pictures, Inc.; Twentieth Century-Fox Film Corporation; Universal Pictures Company, Inc. and United Artists Corporation.

3. The following portions of defendants' evidence, including the testimony of appellants and defendants' witnesses hereinafter mentioned and exhibits filed and read to the Court in connection with said evidence and objections of counsel to admissability of such evidence and exhibits, to-wit: Pp. 1731-1896, Abraham Montague; Pp. 1998-2059, William A. Scully; Pp. 1932-1992a, Paul N. Lazarus.

4. Argument and concession of Government's counsel contained in the minutes of the arguments before the Court on January 17, 1946, at pp. 215-219 inclusive.

5. The following defendants' exhibits not read into evidence: C-1, C-2, C-4, C-5, C-6, C-7, C-9, C-10.

6. Memorandum of Columbia Pictures Corporation on Findings and Decree, containing appellants' proposed Findings and Conclusions, dated September 10, 1946, and submitted to the Court in September, 1946.

7. Opinion of the court dated June 11, 1946.

8. Memorandum of Columbia Pictures Corporation on [fol. 3998] Findings and Decree dated October 16, 1946, and submitted to the Court in October, 1946.

9. Findings and Conclusions filed December 31, 1946.
10. Final decree entered December 31, 1946.
11. Opinion of the Court dated December 31, 1946.
12. Opinion of the Court dated February 3, 1947.
13. Proposed Findings and Conclusions submitted by plaintiff on June 19, 1946.
14. Proposed decree submitted by plaintiff on June 19, 1946.
15. Proposed Findings and Conclusions submitted by plaintiff on October 8, 1946.
16. Proposed Decree submitted by plaintiff on October 8, 1946.
17. Petition for appeal.
18. Assignment of Errors and Prayer for Reversal.
19. Order Allowing Appeal of Columbia Pictures Corporation and Columbia Pictures of Louisiana, Inc.
20. Appeal bond of Columbia Pictures Corporation and Columbia Pictures of Louisiana, Inc. issued by Maryland Casualty Company.
21. Statement required by Rule 12.
22. Citation.
23. Statement of Jurisdiction.
24. Proof of service of appeal papers and of Statement required by Rule 12.
25. This praecipe.

Schwartz & Frohlich, by Louis D. Frohlich, Counsel for Appellants, 1450 Broadway, New York 18, N. Y.

Dated, February 10th, 1947.

[fol. 3999] Service of the foregoing Praecipe and receipt of copy thereof is hereby acknowledged this 10th day of February, 1947.

John F. X. McGohey, United States District Attorney; Tom C. Clark, Attorney General of the United States; Attorneys for Appellee.

To Simpson, Thacher & Bartlett, Esqs., Attorneys for Paramount Defendants, 120 Broadway, New York, N. Y.

Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs.; Attorneys for Loew's Defendants, 15 Broad Street, New York, N. Y.

Donovan, Leisure, Newton, Lumbard & Irvine, Esqs., Attorneys for RKO Defendants, 2 Wall Street, New York, N. Y.

Joseph M. Proskauer, Esq., Attorney for Warner Defendants, 11 Broadway, New York, N. Y.

Dwight, Harris, Koegel & Caskey, Esqs., Attorneys for 20th Century-Fox Defendants, 100 Broadway, New York, N. Y.

O'Brien, Driscoll & Raftery, Esqs., Attorneys for Defendant, United Artists Corporation, 152 West 42nd Street, New York 18, N. Y.

Charles Prutzman, Esq., Attorney for Universal Defendants, 1250 Sixth Avenue, New York, N. Y.

[fol. 4000] AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK,
County of New York, ss:

Max Rose, being duly sworn, deposes and says, that he served the within Praecipe for Record of Columbia Appellants on

Tom C. Clark, Esq., Attorney General of the United States, Department of Justice, Washington, D. C.

Simpson, Thacher & Bartlett, Esqs., Attorneys for Paramount Defendants, 120 Broadway, New York, N. Y.

Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs., Attorneys for Loew's Defendants, 15 Broad Street, New York, New York.

Donovan, Leisure, Newton, Lumbard & Irvine, Esqs., Attorneys for RKO Defendants, 2 Wall Street, New York, New York.

Joseph M. Proskauer, Esq., Attorney for Warner Defendants, 11 Broadway, New York, New York.

Dwight, Harris, Koegel & Caskey, Esqs., Attorneys for Defendants 20th Century-Fox, 100 Broadway, New York, New York.

O'Brien, Driscoll & Raftery, Esqs., Attorneys for Defendant United Artists Corporation, 152 West 42nd Street, New York 18, New York.

Charles Prutzman, Esq., Attorney for Universal Defendants, 1250 Sixth Avenue, New York, New York.

on the 10th day of February, 1947, through the Post Office by depositing a true and correct copy of the same properly

enclosed in a post-paid wrapper, in a Post Office Box, regularly maintained by the Government of the United States at 1450 Broadway, Borough of Manhattan, City of New York and under the care of the General Post Office, in the Borough of Manhattan, City of New York.

[fols. 4001-4004] That a copy of said Praecipe was so mailed to each of the above named attorneys at their respective addresses as stated above. Such address in each instance is the address designated by such attorney or such firm of attorneys for the service of papers.

Max Rose.

Sworn to before me this 10th day of February, 1947. Belle B. Balaton, Notary Public, State of New York.

[fol. 4005] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed February 20, 1947

United Artists Corporation, one of the defendants in the above entitled cause, considering itself aggrieved by (1) the findings and conclusions filed by the Court on December 31, 1946, and (2) the final order and decree of this Court entered on December 31, 1946, does hereby pray an appeal to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court, the defendant presents to this Court herewith a statement [fol. 4006] showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the defendant considers the action of the Court erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Defendant prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said final order and decree was based, duly authenticated, be sent to the Supreme Court of the United States

under the rules of said Court in such cases made and provided.

Dated: New York, this 20th day of February, 1947.
O'Brien, Driscoll & Raftery, by Edward C. Raftery, A Member of the Firm, 152 West 42nd Street, New York 18, New York, Counsel for Defendant, United Artists Corporation.

[fol. 4007] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed February 20, 1947

In the above entitled cause defendant United Artists Corporation having made and filed its petition praying an appeal to the Supreme Court of the United States from the findings and conclusions filed by the Court on December 31, 1946, and the final order and decree entered on December 31, 1946, and having also filed its assignment of errors and prayer for reversal and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided, it is therefore
[fols. 4008-4009] Ordered and Adjudged that the appeal be and the same is hereby allowed as prayed for, and that said defendant give a bond with good and sufficient security in the sum of $2000, and that it, as appellant, shall prosecute its appeal to effect and answer all costs if it fails to make its appeal good.

Dated this 20th day of February, 1947.
Augustus N. Hand, Circuit Judge; Henry W. Goddard, District Judge; John Bright, District Judge.

[fol. 4010] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed February 20, 1947

United Artists Corporation, one of the defendants in the above entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby

assigns error to the final Order and Decree of said District Court entered on December 31, 1946, in the above entitled cause, and to the Findings of Fact and Conclusions of Law filed on December 31, 1946, and says that in the entry of the final order and decree and in the filing of said findings [fol. 4011] and conclusions the District Court committed error to the prejudice of the said defendant in the following particulars:

The Court erred in not including in its Findings the following:

1. That during the entire period in question each Producer of each picture released by United Artists has had and has exercised the full right of exhibition contract approval on all pictures distributed by United Artists in the United States of America.

2. As a general rule each engagement for each exhibition in each theatre is licensed under a separate written contract on the usual printed form used by United Artists Corporation.

3. That the general and usual practice in the licensing of United Artists pictures to exhibitors is as follows: A salesman negotiates a contract or an application for the exhibition of each of the pictures released by United Artists Corporation separately and apart from any other pictures released by United Artists Corporation; that application is forwarded to the home office at New York City and if it bears the approval of the local branch manager or the district manager, it then, and only then, is forwarded to the New York home office; after it is passed upon by the home office of United Artists Corporation it is then submitted to the individual producer's representative in New York for approval or rejection by said producer's representative; if approved, it then is returned to the exhibitor, and if rejected, there is no deal.

4. In isolated cases negotiations are conducted separately for each picture and for convenience more than one picture may be included in a submission or proposed deal. If more than one is included the home office of United [fol. 4012] Artists breaks the deal down by each respective producer and submits the deal to each separate producer's representative for approval or rejection, just as in the case of a separate individual submission.

5. During the period in question every agreement or contract granting an exhibition right was in the nature of a limited exclusive right granted to a theatre owner—first, the physical possession of a positive print, a tangible piece of property, and, second, the intangible right of license to publicly perform in his theatre the copyrighted subject contained in the positive print with no right to assign that performing right to anybody else; that the limited right to exhibit or publicly perform said copyrighted work only in the particular theatre or theatres listed in the contract for the specific number of days included in the contract with no right to lease or sell or in any way dispose of any part of the tangible property or print to anybody else; with a further condition that when the public performance was completed under the contract, the print was to be returned to United's exchange.

6. During the period in question United did not sell or part with the title to any of the positive prints of any of the motion pictures distributed by it to any of the exhibitors exhibiting its motion pictures in the United States of America.

7. During the period in question United Artists through its selling or licensing organization solicited as many exhibitors as possible in the United States of America and tried to secure from said exhibitors separate exhibition license agreements for each of the photoplays distributed by United Artists that were available for exhibition for some run in said exhibitor's theatres.

8. During the period in question United licensed the exhibition of its pictures both to the so-called affiliated theatres [fol. 4013] and independent theatres on flat rental terms, percentage terms and guarantee against percentage terms.

9. During the period in question United Artists licensed the exhibition of each of its pictures generally for approximately 10,000 to 12,000 runs. In order to serve the 12,000 runs United bought from 150 to 350 positive prints for each of the pictures released by it depending upon the quality of the pictures and the number of runs. In each of the communities with theatres, depending upon the number of theatres and the population, United was required to service 12,000 runs with the aforesaid number of prints. The runs therefore varied in the smallest communities where the

usual rule was one run for the community to the large key cities like New York where the picture might have in excess of 100 runs. United therefore licensed its pictures first run, second run, third run and in many other variants of runs in said cities which had more than one run of each picture, it being the desired purpose of United Artists to secure as many runs as possible on the best terms obtainable for each of its pictures in every community.

10. In order to secure as much revenue as possible from each picture United Artists licensed its pictures on these runs with variant time intervals between each run which time intervals are generally referred to in the business as "clearance periods".

In many of the contracts in evidence these clearance provisions are set out in the contract; in many others there are no provisions for clearance.

11. There is no evidence that the extent, duration or area of clearance stipulated in any United Artists contract was arrived at in any other manner other than independent negotiation between United Artists and the other contracting party.

12. In attempting to license the exhibition rights of its photoplays during the period in question United Artists [fol. 4014] licensed its photoplays in intensive competition with the other distributors of motion pictures, to-wit: Loew's, 20th Century-Fox, Paramount, Warners, Universal, RKO, Columbia, all of whom are defendants in this action, and with Republic, Monogram, PRC and other distributors of motion pictures.

13. That if United Artists wished to license its photoplays to exhibitors desiring to acquire said licenses, United Artists, if it was to license its pictures, had to meet the competition both in run and in clearance of United Artists' competitors.

14. As a result of said competition certain uniformities in clearance both in duration and area appear in the various competitive areas in which multiple runs are licensed in the United States of America.

15. In the orderly operation of a theatre in a competitive area where multiple runs are shown, each exhibitor endeavors to secure from each distributor the same clearance

both as to duration and area from whom he licensed the same run in such competitive area.

16. United Artists, in an effort to sell as many runs as possible in every competitive area where multiple runs are shown because of the competitive conditions aforesaid, and notwithstanding the separate negotiations with each exhibitor for the licensing of its runs, licensed the exhibition rights of its pictures to the exhibitors involved in the competitive areas with stipulated clearances which did not differ from the clearances which the exhibitor licensed from other distributor competitors of United Artists.

17. By licensing successive runs and making them available to all types and classes of theatres, charging all kinds and types of admission prices, United Artists made it possible during the period in question for the maximum num-[fol. 4015]-ber of theatres to obtain its pictures on all types of rental contracts and for varying amounts of film rental, so that the maximum number of people were able to see the pictures distributed by United Artists. By so doing United Artists obtained the maximum flow in Interstate Commerce of the positive prints distributed by it during the period in question.

18. A picture, when produced by any so-called "United Artists Producer", is in negative form. In order to be projected onto the screen, so that it may be viewed by the public, the picture must be in positive form. Therefore, from the negative of each picture, positive prints must be made. United Artists licenses some of its features for exhibition in more than twelve thousand theatres throughout the United States. In many cases, the aggregate of the admission prices paid by the public to see a United Artists feature in one of these theatres will not equal the cost to United Artists in making a positive print of the feature, and, in the great majority of cases, the license fee paid to United Artists by a theatre for the license to exhibit a United Artists feature is considerably less than the cost of making a positive print. The average number of prints of a feature which United Artists has found practical and economic to make is far less than the number of theatres in any one of the twenty-six exchange districts, and the cost of making a positive print varies from $100 to $1,000.00.

19. Because of the foregoing facts, it is a practical impossibility for prints of a feature to be made available by

United Artists for simultaneous exhibition in all theatres desiring to show the feature. There are also reasons of showmanship which make simultaneous availability wholly impractical. Under such a setup, the public interest in any given area in a feature picture, which must be built up by repeated exhibitions in various theatres, accompanied by intensive advertising and promotion by each, would be lacking. Furthermore, any member of the public would have but [fol. 4016] one opportunity to see a feature, so that those who were not able to see it on the dates when all theatres in the area exhibited it would never be able to see it.

20. There is no evidence in the record that any exhibitor ever sought a run licensed by United Artists to a competing exhibitor or was ever refused a license by United Artists to exhibit any United Artists picture for that run or any other run that such exhibitor may have sought from United Artists.

21. There is no evidence that any of the clearances licensed by United Artists in any of the exhibition contracts in evidence in this case adversely affected the interest of any exhibitor of motion pictures operating in competition with any of the theatres to which said clearance was licensed.

22. There is no evidence that any exhibitor operating in competition with any of the theatres to which United Artists licensed clearance in any of the contracts in evidence sought from United Artists the same licenses or similar licenses with similar clearances or were refused licenses by United Artists of similar character.

23. None of the clearances shown to have been granted by United Artists was proved to have been unreasonable in duration, area or otherwise.

24. There is no evidence in the record that United Artists discriminated between affiliated and independent theatres in specifying their clearance over other theatres.

25. There is no evidence in the record that United Artists acted concertedly with any other defendant or with any exhibitor to unreasonably restrain the trade of subsequent run theatres through the fixing of clearance for prior run theatres.

[fol. 4017] 26. There is no evidence in the record that the theatres licensed by United Artists for first and prior runs were not those theatres which would be normally selected by an unaffiliated distributor for such purpose, without giving any consideration to the existence or non-existence of producer-distributor affiliation.

27. That since October 1941 the only provision in the printed form of the United Artists exhibition contracts regarding admission prices was as follows:

"Exhibitor warrants he Charges Minimum Admission

(After 5 P. M.—Adults ..... Children .....)
(Matinee —Adults ..... Children .....)"

28. There were no provisions in said contract which required any exhibitor to charge the particular admission which he warranted he charged for the exhibition of the picture licensed to him or that he continue to maintain the minimum admission price, nor did said contracts contain any other provision either of a penalty nature or otherwise concerning minimum admission prices.

29. If there was any similarity in admission prices in any of United Artists' license agreements to any of the admission prices in any other Distributor's exhibition license agreements, it was due to the following fact and circumstances:

Admission prices stipulated in the contracts where similarity existed were the admission prices that the exhibitor charged regularly at his theatre;

If United Artists wished to license a run of any picture to said exhibitor, it would have to meet the competition of the other Distributors of motion pictures in connection with admission price provisions and said similarity was the result of said competition rather than agreement between any of the Distributors. At no time [fol. 4018] during the period in question did United Artists make any license agreement with any exhibitor fixing the resale price of any of the tangible property licensed to any of the exhibitors.

30. The course of conduct of the defendant, United Artists, during the period in question, was to license its product for first run or any run open to independent exhibitors

either operating in competition with the defendant exhibitors or not in competition, including the key cities in the United States having a population of 100,000 or over, wherever independent exhibitors operated theatres.

31. In conducting its business of distribution of motion pictures and making exhibition license agreements during the period in question, United Artists conducted all its negotiations and made all of its contracts, whether with independent or affiliated exhibitors, or unaffiliated circuits, without any intent, purpose or effect to bring about a monopoly in the distribution or exhibition business, or to unduly restrain Interstate Commerce, but merely to license its product in the market the way it found it and with the sole purpose and intent of receiving the maximum amount of revenue legitimately possible for all pictures distributed by it.

32. That at all times during the period in question the defendant United Artists licensed the exhibition of each of its pictures separately for each of its Producers and could not, because of its contractual commitments to its Producers, make any license agreements with any exhibitor without the written approval of each separate Producer and because of the aforesaid it could not bring about a monopoly in the distribution or exhibition business and did not or could not unduly restrain Interstate Commerce in the licensing of its motion pictures in the United States of America.

[fol. 4019] 33. That during the period in question and particularly since October, 1941, the defendant, United Artists, did not include in its exhibition license agreements any provisions requiring any exhibitor to charge a minimum admission price for the exhibition of any of its pictures in any of the theatres to which it licensed exhibition rights.

34. In distributing motion pictures and making exhibition license agreements, United Artists conducted all of its negotiations and made all of its contracts, whether with independent or affiliated exhibitors, or unaffiliated circuits, without any intent or purpose to bring about a monopoly in the distribution or exhibition business, or to unduly restrain Interstate Commerce, and merely licensed its product to the market as it found it, with the sole purpose and intent

of receiving the maximum amount of revenue legitimately possible for all pictures distributed by it.

35. In licensing its motion pictures, which were articles of free commerce, to the various defendants which operated chains of theatres, United Artists had no knowledge or intent that the exhibition of its said motion pictures by said defendants would further or promote violations of the Sherman Act.

36. In licensing its motion pictures to theatres, United Artists did not cooperate with them or any of them in any violation of the Sherman Act.

The Court erred in not including the following proposed Conclusions of Law submitted by the defendant United Artists Corporation:

37. The combination of conspiracy alleged in the complaint as to the United Artists defendants has not been established. These defendants did not at any time during the period involved in this case combine with the defendant distributors, defendant exhibitors or any of their affiliates [fol. 4020] unreasonably to restrain interstate trade or commerce in motion picture films to monopolies or attempt to monopolize the distribution or exhibition of motion picture films in the United States of America.

38. A decree should be entered herein dismissing the complaint against United Artists Corporation, defendant.

The Court erred in including in its Findings of Fact, as to the defendant United Artists Corporation, the following:

39. In licensing features, each of the distributor defendants has agreed with each of its respective licensees that the licensee should charge no less than a stated admission price during the exhibition of the feature licensed.

40. The defendants' licenses are in effect price-fixing arrangements among all of the distributor-defendants, as well as between such defendants individually and their various exhibitors. Thus there was a general arrangement of fixing prices in which both the distributors and exhibitors were involved. The licenses required existing admission price schedules to be maintained under severe penalties for

infraction. In the case of such exceptional features as "Gone With The Wind", "For Whom The Bell Tolls", "Wilson", and "Song of Bernadette", licensed for exhibition prior to general release and as to which the distributors were not satisfied with current prices, they would refuse to grant licenses unless the prices were raised.

41. The defendants granting film licenses have agreed with their licensees to a system which determines minimum admission prices in all theatres where feature motion pictures licensed by them are exhibited. In this way are controlled the prices to be charged for most of the feature motion pictures exhibited either by the defendants or by independents within the United States.

[fol. 4021] 42. All of the five major defendants have a definite interest in keeping up prices in any given territory in which they own theatres and this interest they were safeguarding by fixing minimum prices in their licenses when distributing films to exhibitors in those areas. Even if the licenses were at flat rate, a failure to require their licensees to maintain fixed prices would leave them free for lowering the current charge to decrease through competition the income to the licensor on theatres in the neighborhood. The whole system presupposed a fixing of prices by all parties concerned in all competitive areas. There exists great similarity, and in many cases identity, in the minimum prices fixed for the same theatres in the licenses of all of the defendants.

43. Licenses granted by one defendant to another disclose the same inter-relationship among the defendants. Each of the five major defendants as an exhibitor has been licensed by the other seven defendants as distributors to exhibit the pictures of the latter at specified minimum admission prices. RKO, Loew's, Warner, Paramount, and Fox, in granting and accepting licenses with minimum admission prices specified, have among themselves engaged in a national system to fix prices, and Columbia, Universal, and United Artists, in requiring the maintenance of minimum admission prices in their licenses granted to these exhibitor-defendants, have participated in that system.

44. The distributor-defendants have acquiesced in the establishment of a price-fixing system and have conspired with one another to maintain prices.

45. In agreeing to maintain a stipulated minimum admission price, each exhibitor thereby consents to the minimum price level at which it will compete against other licensees of the same distributor whether they exhibit on the same run or not. The total effect is that through the separate contracts between the distributor and its licensees a price [fol. 4022] structure is erected which regulates the licensees' ability to compete against one another in admission prices. Each licensee knows from the general uniformity of admission price practices that other licensees having theatres suitable for exhibition of a distributor's feature in the particular competitive area will also be restricted as to maintenance of minimum admission prices, and this acquiescence of the exhibitors in the distributor's control of price competition renders the whole a conspiracy between each distributor and its licensees. An effective system of price control in which the distributor and its licensees knowingly take part by entering into price-restricting contracts is thereby erected.

46. The differentials in admission price set by a distributor in licensing a particular feature in theatres exhibiting on different runs in the same competitive area are calculated to encourage as many patrons as possible to see the picture in the prior-run theatres where they will pay higher prices than in the subsequent runs. The reason for this is that if 10,000 people of a city's population are ultimately to see the feature—no matter on what run—the gross revenue to be realized from their patronage is increased relatively.

47. Some licenses granted clearance to all theatres which the exhibitor party to the contract might thereafter own, lease, control, manage, or operate against all theatres in the immediate vicinity of the exhibitor's theatre thereafter erected or opened. The purpose of this type of clearance agreements was to fix the run and clearance status of any theatre thereafter opened not on the basis of its appointments, size, location, and other competitive features normally entering into such determination, but rather upon the sole basis of whether it were operated by the exhibitor party to the agreement.

48. The distributor-defendants have acted in concert in the formation of a uniform system of clearance for the

[fol. 4023] theatres to which they license their films and the exhibitors-defendants have assisted in creating and have acquiesced in this system.

49. The defendants have acted in concert in their grant of run and clearance.

50. Both independent distributors and exhibitors, when attempting to bargain with the defendants, have been met by a fixed scale of clearances, runs, and admission prices to which they have been obliged to conform if they wished to get their pictures shown upon satisfactory runs or were to compete in exhibition either with the defendants' theatre or theatres to which the latter had licensed their pictures.

51. Competition can be introduced into the present system of fixed admission prices, clearances, and runs, by requiring a defendant-distributor when licensing its features to grant the license for each run at a reasonable clearance (if clearance is involved) to the highest bidder, if such bidder is responsible and has a theatre of a size, location, and equipment adequate to yield a reasonable return to the licensor. In other words, if two theatres are bidding and are fairly comparable, the one offering the best terms shall receive the license. Thus, price fixing among the licensors or between a licensor and its licensees as well a the non-competitive clearance system may be terminated.

52. Master agreements which cover exhibition in two or more theatres in a particular circuit and allow the exhibitor to allocate the film rental paid among the theatres as it sees fit and also to exhibit the features upon such playing time as it deems best and leaves other terms to the circuit's discretion, have been entered into by the distributor defendants, and unreasonably restrain trade.

53. Franchises have been entered into by the distributor defendants, and unreasonably restrain trade, because they [fol. 4024] cover too long a period (more than one season), and also because they embrace all the features released by a given distributor.

54. Various contract provisions by which discriminations against small independent exhibitors and in favor of the large affiliated and unaffiliated circuits were accomplished are: suspending the terms of a given contract, if a

circuit theatre remains closed for more than eight weeks, and reinstating it without liability upon reopening; allowing large privileges in the selection and elimination of films; allowing deductions in film rentals if double bills are played; granting moveovers and extended runs; granting road-show privileges; allowing overage and underage; granting unlimited playing time; excluding foreign pictures and those of independent producers; granting rights to question the classification of features for rental purposes. These provisions are found most frequently in franchises and master agreements, which are made with the larger circuits of affiliated and unaffiliated theatres. Small independents are usually licensed, however, upon the standard forms of contract, which do not include them. The competitive advantages of these provisions are so great that their inclusion in contracts with the larger circuits constitutes an unreasonable discrimination against small competitors.

55. The discriminations referred to in Finding 110 would appear to be impossible under a system where the exhibitors competing for a license to exhibit a given feature on a given run do so on a parity since the same offer must be made to all prospective exhibitors in each competitive area.

56. The illegalities and restraints herein found, are not in the ownership of many or most of the best theatres by the producer-distributors, but in admission price-fixing, non-competitive granting of runs and clearances, unreasonable clearances, formula deals, master agreements, franchises, block-booking, pooling agreements and certain discriminations among licensees between defendants and independents. These practices, if employed in the future, in favor of powerful independents would effect all of the undesirable results that have existed when the five exhibitor defendants and their subsidiaries have owned or controlled numerous theatres in which the defendants' pictures have been exhibited.

[fol. 4025]

The Court erred in including in its Conclusions of Law, as to the defendant United Artists Corporation, the following:

57. The defendants Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's, Incorporated;

Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc.; Keith-Albee-Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros. Pictures Inc.; Vitagraph, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; National Theatres Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchanges, Inc.; and United Artists Corporation have unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures and attempted to monopolize such trade and commerce, both before and after the entry of said consent decree, in violation of the Sherman Act by:

(a) Acquiescing in the establishment of a price fixing system by conspiring with one another to maintain theatre admission prices;

(b) Conspiring with each other to maintain a nationwide system of runs and clearances which is substantially uniform in each local competitive area.

[fol. 4026] 58. The distributor defendants Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's, Incorporated; Radio-Keith-Orpheum Corporation; RKO Radio Pictures, Inc.; Warner Bros. Pictures, Inc.; Vitagraph, Inc.; Twentieth Century-Fox Film Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation, have unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures and attempted to monopolize such trade and commerce, both before and after the entry of said consent decree, in violation of the Sherman Act by:

(a) Conspiring with each other to maintain a nationwide system of fixed minimum motion picture theatre admission prices;

(b) Agreeing individually with their respective licensees to fix minimum motion picture theatre admission prices;

(c) Conspiring with each other to maintain a nationwide system of runs and clearances which is substantially uniform as to each local competitive area;

(d) Agreeing individually with their respective licensees to grant discriminatory license privileges to theatres affiliated with other defendants and with large circuits as found in Finding No. 110 above;

(e) Agreeing individually with such licensees to grant unreasonable clearance against theatres operated by their competitors;

(f) Making master agreements and franchises with such licensees;

(g) Individually conditioning the offer of a license for one or more copyrighted films upon the acceptance by the licensee of one or more other copyrighted films, except in the case of the United Artists Corporation;

[fol. 4027] (h) The defendants Paramount and RKO making formula deals.

59. The Formula deals, master agreements and franchises referred to in Findings 86, 88 and 89 have tended to restrain trade and violate Section 1 of the Sherman Act.

60. Block-booking as hereinabove defined, violates the Sherman Act.

The Court erred in including in its Decree, as to the defendant United Artists Corporation, the following provisions:

61. Each of the defendant distributors, Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's, Incorporated; Radio-Keith-Orpheum Corporation; RKO Radio Pictures, Inc.; Warner Bros. Pictures, Inc.; Warner Bros. Pictures Distributing Corporation [formerly known as Vitagraph, Inc.]; Twentieth-Century Fox Film Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation; and the successors of each of them, and any and all individuals who act in behalf of any thereof with respect to the matters enjoined, and each corporation in which said defendants or any of them own a direct or indirect stock interest of more than fifty per cent, is hereby enjoined:

1. From granting any license in which minimum prices for admission to a theatre are fixed by the par-

ties, either in writing or through a committee, or through arbitration, or upon the happening of any event or in any manner or by any means.

2. From agreeing with each other or with any exhibitors or distributors to maintain a system of clearances; the term "clearances" as used herein meaning [fol. 4028] the period of time stipulated in license contracts which must elapse between runs of the same feature within a particular area or in specified theatres.

3. From granting any clearance between theatres not in substantial competition.

4. From granting or enforcing any clearance against theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted. Whenever any clearance provision is attacked as not legal under the provisions of this decree, the burden shall be upon the distributor to sustain the legality thereof.

5. From further performing any existing franchise to which it is a party and from making any franchises in the future. The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as a part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.

6. From making or further performing any formula deal or master agreement to which it is a party. The term "formula deal" as used herein means a licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross. The term "master agreement" means a licensing agreement, also known as a "blanket deal" covering the exhibition of features in a number of theatres usually comprising a circuit.

7. From performing or entering into any license in which the right to exhibit one feature is conditioned

[fol. 4029] upon the licensee's taking one or more other features. To the extent that any of the features have not been trade shown prior to the granting of the license for more than a single feature, the licensee shall be given by the licensor the right to reject twenty per cent of such features not trade shown prior to the granting of the license, such right of rejection to be exercised in the order of release within ten days after there has been an opportunity afforded to the licensee to inspect the feature.

8. From licensing in the future any feature for exhibition in any theatre, not its own, in any manner except the following:

(a) A license to exhibit each feature released for public exhibition in any competitive area shall be offered to the operator of each theatre in such area who desires to exhibit it on some run [other than that upon which such feature is to be exhibited in the theatre of the licensor] selected by such operator, and upon uniform terms;

(b) Each license shall be granted solely upon the merits and without discrimination in favor of affiliates, old customers or others;

(c) Where a run is desired, or is to be offered, upon terms which exclude simultaneous exhibition in competing theatres, the distributor shall notify, not less than thirty days in advance of the date when bids will be received, all exhibitors in the competitive area, offering to license the features upon one or more runs, and in such offer shall state the amount of a flat rental as the minimum for such license for a specified number of days of exhibition, the time when the exhibition is to commence and the availability and clearance, if any, which will be granted for such run. Within fifteen days after receiving such notice, any exhibitor in such competi- [fol. 4030] tive area may bid for such license, and in his bid shall state what run such exhibitor desires and what he is willing to pay for such feature, which statement may specify a flat rental, or a percentage of gross receipts, or both, or any other form of rental,

and shall also specify what clearance such exhibitor is willing to accept, the time and days when such exhibitor desires to exhibit it, and any other offers which such exhibitor may care to make. The distributor may reject all offers made for any such feature, but in the event of the acceptance of any, the distributor shall grant such license upon the run bid for to the highest responsible bidder, having a theatre of a size, location and equipment adequate to yield a reasonable return to the licensor. The method of licensing specified in this subdivision shall not be required in areas where there is no competition among theatres or in run, or in which there is no offer made by any exhibitor within the time above mentioned. The words "exclude simultaneous exhibition" shall be held to mean the exhibition of a specified run in one theatre with clearance over other theatres in the competitive area. The words "competitive area" shall refer to the territory occupied by more than one theatre in which it may fairly and reasonably be said that such theatres compete with each other for the exhibition of features on any run.

(d) Each license shall be offered and taken theatre by theatre and picture by picture.

(e) A theatre is not a defendant's own theatre unless it owns therein a legal or equitable interest of ninety-five per cent or more, either directly or through affiliates or subsidiaries.

9. From arbitrarily refusing to demand of an exhibitor, who operates a theatre in competition with [fol. 4031] another theatre not owned or operated by a defendant distributor, or its affiliate or subsidiary, made by registered mail, addressed to the home office of the distributor, to license a feature to him for exhibition on a run selected by the exhibitor, instead of licensing it to another exhibitor for exhibition in his competing theatre on such run. Such demand shall be deemed to have been refused either upon the receipt by the exhibitor of a refusal in writing or upon the expiration of ten days after the receipt of the exhibitor's demand.

62. Nothing contained in this Decree shall be construed to limit, in any way whatsoever, the right of each distributor-defendant to license, or in any way to arrange or provide for, the exhibition of any or all the motion pictures which it may at any time distribute, in such manner, and upon such terms, and subject to such conditions as may be satisfactory to it, in any theatre in which such distributor-defendant has or may acquire pursuant to the terms of this Decree, a proprietary interest of ninety-five per cent or more either directly or through subsidiaries.

63. For the purpose of securing compliance with this Decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of anti-trust matters, and on notice to any defendant, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege, (1) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Decree, and that during the times that the plaintiff shall desire such access, counsel for such defendant may be present, and (2) subject to the reasonable convenience of such defendant, and without restraint [fol. 4032] or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interview counsel for the officer or employee interviewed and counsel for such defendant company may be present.

Information obtained pursuant to the provisions of this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

64. Paragraphs 7 and 8 of Section II of this judgment shall not become effective until July 1, 1947.

Wherefore, defendant United Artists Corporation prays that the action of the District Court in making the Findings and Conclusions heretofore set forth and in failing to add

the matter heretofore set forth submitted by said defendant, and the action of the District Court in including in the final order and decree of December 31, 1946, the paragraphs hereinbefore set forth, may be held erroneous and said Decree accordingly reversed and the cause remanded for the elimination of said paragraphs in the Decree, and for such other and fit relief as the Court may deem just and proper.

O'Brien, Driscoll & Raftery, By Edward C. Raftery, 152 West 42nd Street, New York 18, New York, Counsel for Defendant, United Artists Corporation.

Dated this 20th day of February, 1947.

[fol. 4033] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR RECORD

To the Clerk of United States District Court, Southern District of New York:

In connection with the appeal allowed United Artists Corporation on February 20, 1947, please prepare a transcript of the record in the above entitled cause in the matter of the appeal taken herein and include in said transcript the following papers in the order given below:

1. The Amended and Supplemental Complaint filed November 14, 1940.

2. Answers to the Amended and Supplemental Complaint of the following defendants:

United Artists Corporation
Paramount Pictures, Inc.
Loew's Incorporated
R.K.O. Radio Pictures, Inc.
Warner Bros. Pictures, Inc.
Twentieth Century-Fox Film Corporation
[fol. 4034] Universal Pictures Company, Inc., and Columbia Pictures Corporation and Columbia Pictures of Louisiana, Inc.

3. The following portions of the official record of the stenographic minutes of the proceedings before the Expediting Court, to wit:

Abraham Montague	pp. 1731-1896
Stephen W. McGrath	pp. 1930-1932
Paul N. Lazarus	pp. 1932-1992a
Harry J. Muller	pp. 1993-1998
William A. Scully	pp. 1998-2059

4. The exhibits placed in evidence and read to the Court on behalf of the defendant United Artists Corporation.

5. Argument on behalf of defendant United Artists Corporation on January 17, 1946, and contained in pages 3771 to 3785 of the official record of the stenographic minutes of the proceedings before the Expediting Court.

6. Proposed Findings of Fact and Conclusions of Law submitted by defendant United Artists Corporation, and Memorandum in Support of defendant United Artists Corporation's said Proposed Findings of Fact and Conclusions of Law.

7. Opinion of the Court dated June 11, 1946.

8. Proposed Final Decree submitted by United Artists Corporation together with the Memorandum in Support of said Decree.

9. Findings and Conclusions filed December 31, 1946.

10. Final Decree entered December 31, 1946.

11. Opinion of the Court dated December 31, 1946.

12. Opinion of the Court dated February 3, 1947.

13. Petition for Appeal by United Artists Corporation dated February 20, 1947.

[fol. 4035] 14. Order Allowing Appeal dated February 20, 1947.

15. Citation dated February 20, 1947.

16. Assignment of Errors and Prayer for Reversal dated February 20, 1947.

17. Statement as to Jurisdiction submitted with petition for appeal.

18. Appeal Bond of United Artists Corporation issued by Fidelity & Deposit Company of Maryland.

19. Statement required by Rule 12.

20. Proof of service of appeal papers and of Statement required by Rule 12.

21. This praecipe.

Dated: February 25, 1947.

O'Brien, Driscoll & Raftery, by Paul D. O'Brien, Counsel for Appellant, United Artists Corporation, 152 West 42nd Street, New York 18, N. Y.

To: Hon. Tom C. Clark, Attorney General of the United States, Department of Justice, Washington, D. C.; Hon. F. X. McGohey, United States Attorney for the Southern District of New York, United States Court House, Foley Square, New York, N. Y., Attorneys for Appellees; Simp-
[fols. 4036-4037] son, Thacher & Bartlett, Esqs., Attorneys for Paramount Defendants, 120 Broadway, New York, N. Y.; Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs., Attorneys for Loew's Defendants, 15 Broad Street, New York, N. Y.; Donovan, Leisure, Newton, Lumbard & Irvine, Esqs., Attorneys for RKO Defendants, 2 Wall Street, New York, N. Y.; Joseph M. Proskauer, Esq., Attorney for Warner Defendants, 11 Broadway, New York, N. Y.; Dwight, Harris, Koegel & Caskey, Esqs., Attorneys for 20th Century-Fox Defendants, 100 Broadway, New York, N. Y.; Charles Prutzman, Esq., Attorney for Universal Defendants, 1250 Sixth Avenue, New York, N. Y.; Schwartz & Frohlich, Esqs., Attorneys for Columbia Defendants, 1450 Broadway, New York, N. Y.

[fol. 4038] In United States District Court

[Title omitted]

Petition for Appeal, Assignments of Error and Prayer for Reversal—Filed February 20, 1947

Petition for Appeal

Universal Pictures Company, Inc., (sued herein as Universal Corporation and Universal Pictures Company
[fol. 4039] Inc.), Universal Film Exchanges Inc., and Big U Film Exchange, Inc., defendants herein, feeling themselves aggrieved by the decree rendered and entered in the above entitled cause on the 31st day of December, 1946, hereby

appeal from the said decree to the Supreme Court of the United States, for the reasons set forth in the Assignments of Error filed herewith, and pray that their respective appeals be allowed, and that citations be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States, under the rules of such Court in such cases made and provided. Pursuant to Rule 12 of the Rules of the Supreme Court, the above named defendants present to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

ASSIGNMENTS OF ERROR

And the said Universal Pictures Company, Inc., (sued herein as Universal Corporation and Universal Pictures Company Inc.), Universal Film Exchanges Inc., and Big U Film Exchange, Inc.,* file the following Assignments of Error upon which they shall rely in the prosecution of their respective appeals to the Supreme Court of the United States, herewith petitioned for in said cause from the decree of the District Court of the United States for the Southern District of New York, entered on the 31st day of December, 1946.

[fol. 4040] The District Court erred:

1. In finding that Universal combined, or conspired and agreed with the other distributor defendants, or any of them, to fix and maintain minimum admission prices in motion-picture theatres.

2. In finding that Universal participated, in violation of the Sherman Act, in a national minimum admission price-fixing system in motion picture theatres, found to have resulted from the practices of the producer-distributor-exhibitor defendants in granting and accepting licenses for feature pictures to and from each other, with minimum admission prices specified.

3. In finding Universal guilty of the violations of the Sherman Act set forth in Assignments of Error Nos. 1 and 2 on the sole basis of the minimum admission prices.

* The term Universal as used herein refers to one or more of these corporations.

which it specified in its licenses for particular motion-picture theatres being similar to those specified by other defendant-distributors, when such similarity as existed was fully accounted for by the practice of exhibitors in maintaining the same admission price from day to day in a particular theatre irrespective of what distributor's pictures were being shown.

4. In finding that the minimum admission prices specified by Universal in its license agreements with particular theatres were in general uniform with the minimum admission prices specified by the seven other distributor-defendants in their license agreements with said theatres.

5. In finding that each of Universal's license contracts of copyrighted pictures constituted illegal price-fixing [fol. 4041] under the Sherman Act in that the maintenance as a minimum of the admission price currently being charged by the theatre licensed was required under specified penalties.

6. In finding that Universal's license contracts with its various licensees constituted an illegal price-fixing system by reason of the fact that they required the maintenance as a minimum of the admission price currently being charged by the theatre licensed.

7. In finding (if it was intended to so find) that Universal, in the case of exceptional features, refused to grant licenses unless the exhibitors licensed would raise their current admission prices.

8. In finding that Universal by requiring the maintenance as a minimum of currently charged admission prices, during the showing of its licensed pictures, and by fixing differentials in price between the various runs in a competitive area, attempted to give prior-run exhibitors as near a monopoly of the patronage as possible, if thereby the Court intended to find that Universal participated in an illegal monopolizing.

9. In finding that Universal in its license agreements commonly specified clearances in terms of the clearances fixed by other distributors.

10. In finding that Universal illegally granted unreasonable clearances to the prejudice of independents.

11. In finding that Universal acquiesced in and forwarded a uniform system of clearances, in violation of the [fol. 4042] Sherman Act, and acted in concert with the other defendant-distributors in the formation of such a system.

12. In finding, if it was intended to so find, that Universal's granting of clearances to all of the theatres in the immediate vicinity of a licensee's theatre, which might thereafter be erected or opened, was not upon a competitive basis, i.e. did not have a reasonable relation to the reward to which Universal was entitled under its copyrights, but that such clearances were illegal because granted upon the sole basis of whether the theatres to be thereafter erected or opened were operated by the exhibitor party to the agreement.

13. In finding that Universal acted in concert with the other defendants in its granting of runs.

14. In finding that Universal participated with the other defendant-distributors and exhibitors in a fixed system of clearances, runs and admission prices, to which independent distributors and exhibitors, when attempting to bargain with it, have been obliged to conform if they wished to get their pictures shown upon satisfactory runs or were to compete in exhibition, either with defendants' theatres or with those theatres to which the latter had licensed their pictures.

15. In finding, if it was intended to so find, that Universal's purpose in granting clearances was to protect particular runs against subsequent runs, and not to augment its own revenue from its copyrights in a legal manner.

16. In finding and concluding that licenses of a feature to circuits of theatres in return for a film rental measured [fol. 4043] by a percentage of the national gross receipts (formula deals) unreasonably restrained interstate commerce in and of themselves, irrespective of the economic power of the distributor entering in them, irrespective of their misuse by the exhibitor, and irrespective of whether or not they were made with affiliated exhibitors, large independent circuits or small independent circuits.

17. In finding and concluding that licensing arrangements with theatre circuits wherein all the theatres of the

circuit were included in a single agreement (master agreements), without affording other theatre owners an opportunity to bid for the picture in their several areas, seriously and unreasonably restrained interstate competition in and of themselves, irrespective of the factors set forth in the preceding Assignment of Error.

18. In finding that Universal cooperated in an unreasonable restraint of interstate commerce with exhibitors by entering into master agreements with theatre chains, because such agreements might be misused in that the licensed exhibitors could allocate the film rentals paid among their theatres as they saw fit and could exhibit the features upon such playing time as they deemed best, and could otherwise act within their discretion.

19. In finding and concluding that the practice of Universal in committing its pictures for more than a year to particular exhibitors for particular runs (franchises) unreasonably restrained interstate commerce in and of itself because said franchises covered too long periods and embraced all the pictures released by Universal, without respect to the effect upon competition under the particular circumstances.

[fol. 4044] 20. In finding and concluding that the franchises granted by Universal to small independent theatre chains were illegal in and of themselves for the foregoing reasons, and without respect to their competitive effect.

21. In finding and concluding that the franchises granted by Universal to individual independent exhibitors were illegal in and of themselves for the foregoing reasons, and without respect to their competitive effect.

22. In defining a franchise without specifying the necessity of its including the grant of preferential exhibition rights, i.e., as a mere long-term commitment.

23. In passing upon the legality of Universal's franchises with independent exhibitors, as defined in the amended and supplemental complaint, which was not an issue in the case.

24. In finding that Universal for many years licensed its films in "blocks" or indivisible groups before they had been actually produced, if by such finding it was intended to find that Universal ever conditioned the selling of one

or more of its pictures upon the purchaser's taking some or all of the remainder thereof.

25. In finding, if it was intended to so find, that Universal required licensees to accept all of its films in order to obtain any.

26. In finding, if it was intended to so find, that Universal through selling its pictures before they were produced, promised pictures of good quality or of a certain type, which when produced proved to be of poor quality or of another [fol. 4045] type, and in further finding, if it was intended to so find, that Universal hindered competing distributors in this way from marketing their products and caused them to lose their outlets for future pictures.

27. In finding, if it was intended to to so find, that Universal, through any of the various license provisions recited in finding of fact No. 110, individually discriminated against small independent exhibitors and in favor of large affiliated and unaffiliated circuits, and in holding this, in and of itself, to be a violation of the Sherman Act.

28. In the making of findings Nos. 152, 153, 154, 155 and 156, insofar as such findings by exculpating the theatre-owning defendants in respect of their activities in acquiring licenses for motion pictures and in the exhibition thereof, find, infer or conclude that any of the restraints or illegalities found by the Court are attributable to the activities of the Universal defendants.

29. In concluding that the Universal defendants have combined and conspired with the other defendants to unreasonably restrain interstate commerce in the distribution and exhibition of motion pictures, and have attempted to monopolize such trade and commerce in violation of Sections 1 and 2 of the Sherman Act, through participating in a nation-wide system of fixed motion-picture theatre minimum admission prices, and in a nation-wide system of runs and clearances which are substantially uniform in each local competitive area.

30. In concluding that the Universal defendants have unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures and have attempted [fol. 4046] to monopolize such trade and commerce in violation of Sections 1 and 2 of the Sherman Act by:

(a) Conspiring with the other defendant-distributors to maintain a nation-wide system of fixed minimum motion-picture theatre admission prices;

(b) Agreeing with their licensees to fix minimum motion picture theatre admission prices;

(c) Conspiring with the other defendant-distributors to maintain a nation-wide system of runs and clearances which is substantially uniform as to each local competitive area;

(d) Agreeing with their licensees to grant discriminatory license privileges to theatres affiliated with other defendants and with large circuits as found in finding No. 110;

(e) Agreeing with their licensees to grant unreasonable clearance against theatres operated by their competitors;

(f) Making master agreements and franchises with such licensees;

(g) Conditioning the offer of a license for one or more copyrighted film upon the acceptance by the licensee of one or more other copyrighted films.

31. In concluding that Universal has combined and conspired to unreasonably restrain interstate trade and commerce in the distribution and exhibition of motion pictures, and has attempted to monopolize the same in violation of Sections 1 and 2 of the Sherman Act by conditioning the [fol. 4047] offer of a license for one or more copyrighted films upon the acceptance by the licensee of one or more other copyrighted films.

32. In concluding that the master agreements made by Universal violated Section 1 of the Sherman Act.

33. In concluding that the franchises made by Universal, including the franchises with small independent exhibitors, violated Section 1 of the Sherman Act.

34. In decreeing that the Universal defendants shall be permanently enjoined from granting any license under copyright in which the minimum price for admission to an affiliated theatre is fixed by the parties.

35. In decreeing that the Universal defendants shall be permanently enjoined from granting any license under copyright to an independent chain of theatres or a single independent theatre, in which minimum prices for admission are fixed by the parties.

36. In enjoining the Universal defendants from agreeing with the other defendant-distributors to maintain a system of clearances, in view of the fact that the evidence does not justify the conclusion that Universal so acted.

37. In enjoining the Universal defendants from agreeing with exhibitors to maintain a system of clearances, in view of the fact that the evidence does not justify the conclusion that Universal so acted.

38. In failing to define a system of clearances as excluding the granting of licenses with clearance, whether reason-[fol. 4048] able or unreasonable, by a distributor to numerous exhibitors.

39. In decreeing that the Universal defendants may not grant any clearance between theatres not in substantial competition with the theatre receiving the license.

40. In decreeing that the Universal defendants shall not grant or enforce any clearance against theatres in substantial competition with the theatre receiving the license for exhibition, in excess of what is reasonably necessary to protect the licensee in the run granted.

41. In decreeing that the burden of proof in sustaining the legality of any clearance attacked as illegal shall be on the distributor.

42. In decreeing that the Universal defendants may not further perform existing franchises with affiliated theatres.

43. In decreeing that the Universal defendants may not further perform existing franchises with independent theatre circuits.

44. In decreeing that the Universal defendants may not further perform existing franchises with independent theatres.

45. In decreeing that the Universal defendants may not make any franchises in the future with affiliated theatres, irrespective of whether or not the effects of the combination

and conspiracy found by the Court have in the meantime been dissipated.

[fol. 4049] 46. In decreeing that the Universal defendants may not make any franchises in the future with independent theatre chains, irrespective of their effect upon competition.

47. In decreeing that the Universal defendants may not make any franchises in the future with independent theatres, irrespective of their effect upon competition.

48. In decreeing that the Unversal defendants may not further perform any existing formula deal or master agreement with affiliated theatres.

49. In decreeing that the Universal defendants may not further perform any existing formula deal or master agreement with independent theatre chains, irrespective of the effect upon competition.

50. In decreeing that the Universal defendants may not make any formula deals or master agreements with affiliated theatres in the future, whether or not the effects of the combination and conspiracy found by the Court have in the meantime been dissipated.

51. In decreeing that the Universal defendants may not make any formula deal or master agreement in the future with an independent theatre chain, irrespctive of the effect upon competition.

52. In decreeing that the Universal defendants may not perform any license agreement with any affiliated theatre, in which the license to exhibit one feature has been conditioned upon the licensee taking one or more other features.

[fol. 4050] 53. In decreeing that the Universal defendants may not perform any license agreement with any independent theatre chain or independent theatre in which the license to exhibit one feature is conditioned upon the licensee's taking one or more other features.

54. In decreeing that the Universal defendants may not in the future enter into a license agreement with any affiliated theatre in which the license of one feature is conditioned upon the taking of one or more other features, irrespective of whether or not the effects of the combination and conspiracy found by the Court have in the meantime been dissipated, and irrespective of the effect upon competition.

55. In decreeing that the Universal defendants may not in the future enter into any license agreement with any independent theatre chain or independent theatre, in which a license to exhibit one feature is conditioned upon the licensee's taking one or more other features, irrespective of the effect upon competition.

56. In decreeing that the Universal defendants, in offering to license their pictures in the future for exhibition in any theatre, may not do so, except in the manner and under the conditions prescribed by the Court in the provision of its decree numbered II (8).

57. In decreeing that each license shall be offered and taken theatre by theatre and picture by picture.

58. In decreeing that the method of competitive bidding set forth in II(8)(c) shall be followed where any exhibitor in a competitive area desires it.

[fol. 4051] 59. In decreeing that to the extent that any of Universal's pictures have not been trade shown, prior to the granting of a license for more than a single picture, the licensee shall be given the right to reject 20% of such pictures not trade shown.

60. In decreeing that the Universal defendants may not arbitrarily refuse to license their feature pictures to a particular exhibitor.

61. In decreeing, that while the producer-exhibitor defendants may license, or in any way arrange or provide for the exhibition of their motion pictures in their own theatres, in such manner, and upon such terms, and subject to such conditions as may be satisfactory to them, the Universal defendants may not acquire show-windows for their motion pictures through long-term contractual arrangements with independent theatres.

62. In failing to find that Universal, as a producer and distributor without theatres, would have no reliable market for the great majority of its pictures, if offered singly, and that under such a procedure its ability to compete with the integrated defendants would be greatly lessened, and its speculative risk greatly increased.

63. In failing to find that Universal has a reliable market in the otherwise under-supplied exhibitor for a large group

of pictures of the less expensive type, and that such exhibitors, constituting most of the exhibitors in the country, desire to purchase their pictures in large groups, as it gives them assurance of the product.

[fol. 4052] 64. In failing to find that by offering its pictures in groups in the first instance, Universal's ability to compete with the integrated companies is greatly increased.

65. In failing to find that there is no evidence that Universal ever conditioned the licensing of one motion picture upon an exhibitor's agreement to license other motion pictures.

66. In failing to find that there is no evidence that Universal ever required exhibitors, who did not care to buy all of its feature pictures, to pay an excessive or disproportionate price for what they bought.

67. In failing to find that there is no evidence that Universal pictures were at all indispensable to the successful operation of any motion picture theatre.

68. In failing to find that the same privileges of selectivity and cancellation were granted by Universal to independent and affiliated theatres alike.

69. In failing to find that each Universal license of motion pictures to an exhibitor provided for: (a) an exclusive limited license under copyright to publicly perform or exhibit, in his theatre only and limited to a stated number of days, the copyrighted motion pictures licensed; and (b) the temporary physical possession by the exhibitor during the exhibition period of a positive print of the motion picture, making it possible for him to exercise the intangible exhibition right under the copyright.

70. In failing to find that the franchises granted by Universal to independent exhibitors promoted competition in [fol. 4053] interstate commerce instead of unreasonably restraining it.

71. In failing to find that in licensing its photoplays to exhibitors Universal had to meet the competition, both in run and in clearance, of its competitors, and that it could not, therefore, give less clearance, and was unwilling to give more clearance.

72. In failing to find that in the orderly operation of a theatre in a competitive area where multiple runs are shown, such exhibitor will insist on obtaining from Universal as much clearance, both as to duration and area, as he has obtained from the other distributors from whom he has licensed the same run in such competitive area.

73. In failing to find that there is no evidence that any exhibitor was ever refused a license by Universal to exhibit any Universal picture on any particular run.

74. In failing to find that there is no evidence that any of the clearances specified by Universal in any of the exhibition contracts in evidence in this case adversely affected the interest of any exhibitor of motion pictures operating in competition with any of the theatres so licensed.

75. In failing to find that there is no substantial evidence that any exhibitor, operating in competition with the theatres to which Universal licensed its pictures with clearance, sought from Universal the same licenses or similar licenses with similar clearances, or was refused licenses by Universal of similar character.

[fol. 4054] 76. In failing to find that there is no substantial evidence in the record that Universal acted concertedly with any other defendant, or with any exhibitor, to unreasonably restrain the trade of any subsequent-run theatre through the fixing of clearance for prior run theatres.

77. In failing to find that there is no substantial evidence in the record that the theatres licensed by Universal for first and prior runs were not those theatres which would be normally selected by an unaffiliated distributor for such purpose, without giving any consideration to the existence or non-existence of producer-distributor affiliation.

78. In failing to find that there is no evidence of any kind of an express agreement, written or oral, between Universal and any other defendant, or of any communication, written or oral, between any agent of Universal and any agent of any other defendant, for the purpose of, or having the effect of, fixing, affecting or in any way determining the persons to whom Universal should license its pictures, or the terms or conditions under which such pictures should be licensed, except that Universal engaged in negotiations

with the theatre-owning defendants of the same character as engaged in by Universal with theatre operators who were not defendants, for the licensing of pictures released by Universal to be exhibited in such theatres.

79. In failing to find that there is no evidence in the record that Universal ever communicated, orally or in writing, with any other defendant-distributor on the subject of film rentals, admission prices, clearances, runs to be granted, [fol. 4055] or any other matters connected with the distribution or the licensing of motion pictures.

80. In failing to find that there is no evidence that the deals made by Universal with affiliated exhibitors were substantially more favorable to them than the deals made by Universal with independent exhibitors were to them, when such deals are looked at over-all.

81. In failing to find that Universal conducted its negotiations with exhibitors for licenses upon the basis of the admission price policy of such exhibitors, which varied in each competitive area, and provided in its license agreements against the reduction of such admission price for the sole purpose of protecting the aggregate amount of film rental to be received by it from all runs in each competitive area.

82. In failing to find that to the extent that there was similarity in the admission prices specified in Universal exhibition license agreements to the admission prices specified in other distributors' exhibition license agreements, it was entirely due to the fact that the admission prices so stipulated in the various contracts were the admission prices that the exhibitor had fixed and was currently charging at his theatre, and upon the basis of which the licenses were granted.

83. In failing to find that there is no evidence in the record that Universal ever exercised its reserved right under its license agreements to penalize an exhibitor for lowering his admission price for exhibitions of Universal pictures.

[fol. 4056] 84. In failing to find that aside from the license agreements themselves, there is no evidence in the record that Universal ever attempted to prevent any exhibitor from freely changing the admission price he desired to

charge, either by lowering it or raising it, or ever attempted to specify the admission price to be charged by an exhibitor.

85. In failing to make the following finding proposed by Universal:

In 41 out of the 92 cities in the United States having a population of 100,000 or over, there were no independent first-run theatres operating during the 1943-44 motion picture season to which Universal could have licensed its pictures in preference to the affiliated first-run theatres operating in such cities. In approximately one-half of the remainder of said 92 cities, Universal licensed its product to the independent first-run theatres in competition with the affiliated theatres in such cities. There is no substantial evidence that in any of the cities, composing the other one-half of the remainder of said 92 cities, the independent first-run theatres were willing to buy Universal product on terms equivalent or substantially equivalent to those upon which it was purchased by the affiliated theatres to which it was sold. Prior to the 1943-44 motion picture season, and back to and including the 1936-37 motion picture season, the situation at no time was materially different from the foregoing.

86. In failing to make the following finding proposed by Universal:

In distributing motion pictures and making exhibition license agreements, Universal conducted all of its negotia- [fol. 4057] tions and made all of its contracts, whether with independent or affiliated exhibitors, or unaffiliated circuits, without any intent or purpose to bring about a monopoly in the distribution or exhibition business, or to unduly restrain interstate commerce, and merely licensed its product to the market as it found it, with the sole purpose and intent of receiving the maximum amout of revenue legitimately possible for all pictures distributed by it.

87. In failing to make the following finding proposed by Universal:

In licensing its motion pictures, which were articles of free commerce, to the various defendants which operated chains of theatres, Universal had no knowledge or intent that the exhibition of its said motion pictures by said defendants would further or promote violations of the Sherman Act, if in fact it did so.

88. In failing to make the following finding proposed by Universal:

In licensing its motion pictures to the various defendants which operated chains of theatres, Universal did not co-operate with them or any of them in any violation of the Sherman Act, even assuming that it had knowledge of the fact, if it be a fact, that said defendants or some of them were violating the Sherman Act.

89. In failing to find that there is no substantial evidence in the record that Universal discriminated between independent and affiliated licensees in respect of film rentals, clearances or minimum admission prices.

[fol. 4058] 90. In failing to confine the operation of the decree to the Continental United States.

91. In failing to exclude road-shows from the prohibition against specifying minimum admission prices.

92. In concluding that the similarity, and in many cases identity, in minimum admission prices contained in licenses for the same theatre, spelled uniformity of action among Universal and the other defendant distributors, and that such uniformity of action spelled an unlawful system in which Universal participated.

93. In decreeing that Universal must offer a license upon uniform terms to exhibit each feature released for public exhibition in any competitive area to the operator of each theatre in such area who desires to exhibit it on some run selected by such operator.

94. In decreeing that Universal may not take into consideration, in determining to which exhibitor to license its films, the past business dealings between it and an old customer.

95. In decreeing that Universal shall follow a method of competitive bidding which forbids it as a licensor of copyrighted motion-pictures to take in consideration, in awarding licenses which exclude simultaneous exhibition, any factors other than the responsibility of the bidder, the amount of film rental offered, and the adequacy of the theatre, in respect of size, location and equipment, to yield a reasonable return to the licensor.

96. In decreeing that Universal shall follow a method of competitive bidding which forbids it to offer a license in [fol. 4059] consideration of the payment of a percentage of the gross receipts of a theatre.

97. In decreeing that Universal shall follow a method of competitive bidding which compels the licensor to determine the highest bidder under penalty of contempt, and yet prescribes a method for offers and counter-offers which makes such determination impracticable.

98. In decreeing that each license granted by Universal shall be upon the merits without discrimination in favor of affiliates, old customers or others, while at the same time prescribing a method of bidding to be followed which excludes the consideration of many factors going to the merits.

99. In decreeing that Universal shall follow a method of competitive bidding which will greatly increase its expense of operation and is impracticable to comply with in many respects.

100. In failing to grant the motions made by the Universal defendants, and each of them, to dismiss the petition and amended and supplemental complaint, upon the grounds set forth in the motion appearing at pages 383-4, 503-526 and 2501 of the Record as printed for the District Court.

101. In failing to grant the motions made by the Universal defendants, and each of them, to strike exhibits and evidence upon the grounds set forth in the motion appearing at pages 383-4, 503-526 and 2501 of the Record as printed for the District Court.

102. In infringing upon Universal's right to grant exclusive licenses under copyright.

[fol. 4060.] 103. In finding that the Universal defendants or any of them violated the Act of Congress approved July 2, 1890 (26 Stat. 209; 15 U. S. C.), commonly known as the Sherman Act.

104. In failing to conclude that the Universal defendants did not at any time combine, conspire or contract with any of the defendant-distributors, with any of the defendant-exhibitors or with any of their affiliates or with any other person or corporation to unreasonably restrain trade or to

monopolize the same, nor did they monopolize or attempt to monopolize the same.

105. In failing to conclude that a decree should be entered as to each and all of the Universal defendants dismissing the petition and amended and supplemental complaint.

PRAYER FOR REVERSAL

Wherefore, defendants pray that the said decree may be reversed, and that a judgment or decree be rendered in favor of said defendants dismissing the petition and amended and supplemental complaint as to them, and for such other and further relief as to the Court may seem just and proper.

Charles D. Prutzman, Attorney for Universal Pictures Company Inc. and other Universal defendants, 1250 Sixth Avenue, New York, N. Y.

Thomas Turner Cooke, Of Counsel.
Dated: February 19, 1947.

[fols. 4061-4063] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed February 20, 1947

The defendants, Universal Pictures Company, Inc., (sued herein as Universal Corporation and Universal Pictures Company Inc.), Universal Film Exchanges Inc., and Big U Film Exchange Inc., having filed their respective petitions for appeals to the Supreme Court of the United States from the final judgment and decree of this Court entered herein on the 31st day of December, 1946, and having filed their Assignments of Error and Prayer for Reversal, and Statement of Jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided, it is hereby

Ordered, that the appeals herein to the Supreme Court of the United States be and they are hereby allowed as prayed for.

February 19th, 1947.

Augustus N. Hand, United States Circuit Judge,
Henry W. Goddard, United States District Judge,
John Bright, United States District Judge.

[fol. 4064] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the United States District Court:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal to the Supreme Court of the United States of defendants Universal Pictures Company Inc. (sued herein as Universal Corporation and Universal Pictures Company Inc.), Universal Film Exchanges Inc., and Big U Film Exchange, Inc., and include in said transcript, in the order given below, the following papers, viz.:

1. Amended and supplemental complaint filed November 14, 1940.

2. Answer of defendants Universal Pictures Company Inc., Universal Corporation, Universal Film Exchanges Inc., and Big U Film Exchange, Inc. thereto, filed March 3, 1941.

3. Expediting Certificate, filed June 13, 1945.

4. Transcript of the proceedings and hearings before the Expediting Court, including therein the testimony of all of the witnesses called either by the plaintiff or by any of the defendants, from October 8, 1945, through January 22, 1947.

5. All of the exhibits which were admitted in evidence as against the above-named appellants or which were received [fol. 4065] on their behalf, during the foregoing hearings and proceedings.

6. Opinion of the Court, dated June 11, 1946.

7. Findings of fact and conclusions of law of the Court, filed December 31, 1946.

8. Judgment and decree filed December 31, 1946.

9. Memorandum in re Findings and Decree filed December 31, 1946.

10. Petition for Appeal.

11. Assignments of Error and Prayer for Reversal.

12. Order Allowing Appeal.

13. Citation.

14. Statement as to Jurisdiction of the Supreme Court of the United States.

15. Statement required by Rule 12.

16. Proof of Service of the foregoing Appeal papers.

17. Cost Bond.

18. This Praecipe.

Charles D. Prutzman, Attorney for Defendants-Appellants.

This 21st day of February, 1947.

Service of the foregoing praecipe for transcript of record, and the receipt of a copy thereof are hereby acknowledged this 21st day of February, 1947.

——, Attorney for the United States of America, Plaintiff.

[fol. 4066] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the United States District Court for the Southern District of New York:

Please prepare a transcript of the record in the above entitled cause in the matter of the appeals therein by the Paramount, Loew, RKO, Warner and Twentieth Century-Fox defendants to the Supreme Court of the United States, and include in said transcript, in the order given below, the following:

1. Petition, filed July 30, 1938.

2. Answers to the Petition filed by all defendants.

3. Amended and supplemental complaint filed November 14, 1940.

4. Answers to amended and supplemental complaint filed by all defendants.

5. Consent decree filed November 20, 1940, including Rules of Arbitration.

[fol. 4067] 6. Official record of the stenographic minutes of the hearing before Judge Goddard with respect to the entry of the Consent Decree, held on November 14, 1940.

7. Application for Modification of Consent Decree, filed by Plaintiff August 7, 1944.

8. Motion by Plaintiff for a temporary injunction filed on or about February 5, 1945 and the stenographic minutes of the hearing thereon, held March 5, 1945.

9. Expediting certificate filed June 13, 1945.

10. Opinion of the Expediting Court rendered June 11, 1946.

11. Proposed findings of fact and conclusions of law, filed by these defendants.

12. Proposed judgments or decrees, filed by these defendants.

13. Memorandum opinion of the Court in re findings and decree, dated December 31, 1946.

14. The Court's findings of fact and conclusions of law, filed December 31, 1946.

15. Judgment or decree of the Court entered on December 31, 1946.

16. Motions to amend and clarify the findings and judgment, filed by these defendants.

17. Memorandum Opinion of the Court re these defendants' motions to amend and clarify, filed February 3, 1947.

[fol. 4068] 18. Order entered on February 11, 1947 with respect to these defendants' motions to amend and clarify findings and judgment.

19. Official record of the stenographic minutes of the proceedings before the Expediting Court from October 8, 1945 through January 22, 1947.

20. All of the exhibits received in evidence on behalf of the plaintiff and each of the defendants.

21. Petitions for appeal filed by these defendants.

22. Assignments of errors and prayers for reversal filed by these defendants.

23. Statements of jurisdiction filed by these defendants.

24. Orders allowing appeals of these defendants.

25. These defendants' cost bonds and endorsements of approval thereof.

26. These defendants' statements required by Rule 12.

27. These defendants' citations.

28. Proofs of service of 21-24 and 26-7 above.

29. This praecipe.

Respectfully submitted, Simpson Thacher & Bartlett, Attorneys for Defendants Paramount Pictures, Inc. and Paramount Film Distributing Corporation, by Albert C. Bickford, a Member of the Firm, 120 Broadway, New York, N. Y.; Donovan [fol. 4069] Leisure Newton Lumbard & Irvine, Gordon E. Youngman, Attorneys for Defendants Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, and RKO Midwest Corporation, by Thomas J. McFadden, a Member of the Firm, 2 Wall Street, New York, N. Y.; Joseph M. Proskauer, Robert W. Perkins, Attorneys for Defendants Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation and Warner Bros. Circuit Management Corporation, by Joseph M. Proskauer, 11 Broadway, New York, N. Y.; Davis Polk Wardwell Sunderland & Kiendl, J. Robert Rubin, Attorneys for Defendant Loew's Incorporated, by Theodore Kiendl, a Member of the Firm, 15 Broad Street, New York, N. Y.; [fol. 4070] Dwight Harris Koegel & Caskey, Attorneys for Twentieth Century-Fox Film Corporation, and National Theatres Corporation, by John F. Caskey, a member of the Firm, 100 Broadway, New York, N. Y.

Dated, March 3, 1947.

To Hon. Tom C. Clark, Attorney General of the United States, Department of Justice, Washington, D. C.; Hon. F. X. McGohey, U. S. Attorney for the Southern District of New York, U. S. Court House, Foley Square, New York,

N. Y.; Schwartz & Frohlich, Attorneys for Columbia Pictures Corp., et al., 1450 Broadway, New York, N. Y.; O'Brien, Driscoll & Raftery, Attorneys for United Artists Corporation, 152 West 42nd Street, New York, N. Y.; Charles Prutzman, Attorney for Universal Defendants, 1250 6th Avenue, New York, N. Y.

[fol. 4071] Proof of Service

Service of the foregoing praecipe in the above-entitled cause is accepted, and copies received this 5th day of March, 1947.

(3 copies rec'd) Tom C. Clark, (1 copy rec'd) John F. X. McGohey, Copy rec'd Schwartz & Frohlich, O'Brien Driscoll Raftery & Lawler, Copy rec'd Charles Prutzman.

[fol. 4072] In District Court of the United States

[Title omitted]

Counter-Praecipe

To the Clerk of the United States District Court for the Southern District of New York:

In connection with the appeal by the plaintiff, United States of America, from the judgment or decree entered herein December 31, 1946, you are hereby requested, pursuant to the provisions of Rule 10 of the Rules of the Supreme Court of the United States, to incorporate into the transcript of record on such appeal, in addition to the portions of the record indicated by the United States of America in its praecipe dated February 18, 1947, the following papers:

1. Petition filed July 30, 1938.

2. Answers to the petition filed by all defendants.

3. Application for modification of the consent decree filed by the plaintiff August 7, 1944.

4. Motion by plaintiff for a temporary injunction filed on or about February 5, 1945, and the stenographic minutes of the hearing thereon held March 5, 1945.

[fol. 4073] 5. Proposed findings of fact and conclusions of law filed by the undersigned defendants.

6. Memorandum opinion of the court re the motions of these defendants to amend and clarify the decree, filed February 19, 1947.

7. Petitions for appeal filed by each of the undersigned defendants.

8. Assignments of errors and prayers for reversal filed by each of the undersigned defendants.

9. Statements of jurisdiction filed by each of the undersigned defendants.

10. Orders allowing appeals of each of the undersigned defendants.

11. The undersigned defendants' cost bonds and endorsements of approval thereof.

12. The undersigned defendants' statements required by Rule 12.

13. The undersigned defendants' citations.

14. Proofs of service of the undersigned defendants' petitions for appeal, assignment of errors, statements of jurisdiction, orders allowing appeals, statements required by Rule 12 and citations.

15. This counter-praecipe.

Dated, March 5, 1947.

Respectfully submitted, Simpson Thacher & Bartlett, Attorneys for Defendants Paramount Pictures, Inc. and Paramount Film Distributing Corporation, by Albert C. Bickford, a Member of the Firm, 120 Broadway, New York, N. Y. Donovan Leisure [fol. 4074] Newton Lumbard & Irvine, Gordon E. Youngman, Attorneys for Defendants Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, and RKO Midwest Corporation, by Thomas J. McFadden, a Member of the Firm, 2 Wall Street, New York, N. Y.; Joseph M. Proskauer, Robert W. Perkins, Attorneys for Defendants Warner Bros. Pictures, Inc., Warner

Bros. Pictures Distributing Corporation and Warner Bros. Circuit Management Corporation, by Joseph M. Proskauer, 11 Broadway, New York, N. Y.; Davis Polk Wardwell Sunderland & Kiendl, J. Robert Rubin, Attorneys for Defendant Loew's Incorporated, by Theodore Kiendl, a Member of the Firm, 15 Broad Street, New York, N. Y.; Dwight [fol. 4075] Harris Koegel & Caskey, Attorneys for Twentieth Century-Fox Film Corporation, and National Theatres Corporation, by John F. Caskey, a Member of the Firm, 100 Broadway, New York, N. Y.

Dated, March 5, 1947.

To Hon. Tom C. Clark, Attorney General of the United States, Department of Justice, Washington, D. C.; Hon. F. X. McGohey, U. S. Attorney for the Southern District of New York, U. S. Court House, Foley Square, New York, N. Y.; Schwartz & Frohlich, Attorneys for Columbia Pictures Corp., et al., 1450 Broadway, New York, N. Y.; O'Brien, Driscoll & Raftery, Attorneys for United Artists Corporation, 152 West 42nd Street, New York, N. Y.; Charles Prutzman, Attorney for Universal Defendants, 1250 6th Avenue, New York, N. Y.

[fol. 4076] Proof of Service

Service of the foregoing counter-praecipe in the above-entitled cause is accepted, and copies received this 5th day of March, 1947.

(3 Copies Rec'd) Tom C. Clark, (1 Copy Rec'd) John F. X. McGohey, U. S. Atty.; (Copy Rec'd) Schwartz & Frohlich, O'Brien, Driscoll, Raftery & Lawler, (Copy Rec'd) Charles Prutzman.

[fol. 4077] In the United States District Court

[Title omitted]

Order Allowing Appeal

American Theatres Association, Inc.; Southern California Theatre Owners Association; Joseph Moritz; Southern California Amusement Company, Inc.; Exhibitors'

Service, Inc.; Lawrence Capitol, Inc.; Bijou Amusement Company and Paul Realty Company; Andy Anderson; Arch and Milas L. Hurley; Raymond and Willard Gervers; Gamble Enterprises, Inc.; and St. Louis Ambassador Theatre, Inc., Eden Theatre Company, St. Louis Missouri Theatre, Inc., and Fanchon & Marco Service Corporation having filed a petition for appeal to the Supreme Court of the United States from the Orders entered herein on December 31, 1946, and January 21, 1947, and having filed their assignments of errors, it is hereby

[fols. 4078-4084] Ordered, that an apeal by the above named parties in the above entitled cause to the Supreme Court of the United States from the Orders heretofore filed and entered herein on December 31, 1946, and January 21, 1947, be and the same is hereby allowed and that the record on appeal be made and certified and sent to the Supreme Court of the United States in accordance with the rules of that Court, said appeal being hereby made returnable forty (40) days from the date hereof; and it is hereby

Ordered further that the bond on appeal to be approved by this Court is fixed at the sum of $2,000.00.

Dated February 26th, 1947.

Augustus N. Hand, U. S. Judge for Second Circuit; Henry W. Goddard, District Judge for the Southern District of New York; John Bright, District Judge for the Southern District of New York.

[fol. 4085] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF AMERICAN THEATRES ASSOCIATION INC., ET AL., FOR ALLOWANCE OF APPEAL

American Theatres Association, Inc.; Southern California Theatre Owners Association; Joseph Moritz; Southern California Amusement Company, Inc.; Exhibitors' Service, Inc.; Lawrence Capitol, Inc.; Bijou Amusement Company and Paul Realty Company; Andy Anderson; Arch and Milas L. Hurley; Raymond and Willard Gervers; Gamble Enterprises, Inc.; and St. Louis Ambassador Theatre, Inc., Eden Theatre Company, St. Louis Missouri Theatre, Inc.,

and Fanchon & Marco Service Corporation filed in this court a Motion for Leave to Intervene and Intervening Petition which came on before this court for argument on October 21, 1946. The Motion requested leave to intervene to oppose [fol. 4086] the adoption of a decree requiring competitive bidding for the licensing of film to exhibitors. On December 31, 1946, the court adopted a decree containing modified provisions with respect to competitive bidding in paragraph 8(c) of Part II thereof. On January 21, 1947, this court denied the said Motion for Leave to Intervene, but granted permission to be heard and to file a brief as amicus curiae. On February 3, 1947, this court amended its decree of December 31, 1946, in respects not relevant to appellant's petition. The above named parties do hereby petition for leave to appeal from this court's orders of December 31, 1946, and January 21, 1947, to the Supreme Court of the United States because of errors prejudicial to them which are set forth in the assignment of errors presented and filed herewith, and pray that their appeal be allowed and that citation be issued as provided by law and that the record on appeal be made and certified and sent to the Supreme Court of the United States in accordance with the rules of that Court. And your petitioners further pray that an order be made fixing the amount of security which your petitioners shall give and furnish upon such appeal.

Thurman Arnold, Arnold & Fortas, 821 15th Street, N. W., Washington 5, D. C.; Paul Williams, General Counsel to Southern California Theatre Owners Association, Attorneys for Appellants.

Dated February 25, 1947.

[fol. 4087] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL

American Theatres Association, Inc.; Southern California Theatre Owners Association; Joseph Moritz; Southern California Amusement Company, Inc.; Exhibitors' Service, Inc.; Lawrence Capitol, Inc.; Bijou Amusement Company and Paul Realty Company; Andy Anderson; Arch and

Milas L. Hurley; Raymond and Willard Gervers; Gamble Enterprises, Inc.; and St. Louis Ambassador Theatre, Inc., Eden Theatre Company, St. Louis Missouri Theatre, Inc., and Fanchon & Marco Service Corporation in connection with their Petition for an Appeal to the Supreme Court of the United States, hereby assign error to the entry of the judgments entered on December 31, 1946, and January 21, 1947, in the above entitled cause. The December 31, 1946, [fols. 4087a-4089] order imposed a system of competitive bidding on exhibitors and the order of January 21, 1947, denied moving parties the right to intervene and permitted them only to be heard and to file a brief as amicus curiae. The above parties say that in the entry of the said judgments the said District Court committed error to their prejudice in the following particulars:

(1) The Court erred in denying their Motion for Leave to Intervene;

(2) The Court erred in denying their right to file their Intervening Petition;

(3) The Court erred in limiting your appellants to the right to be heard and to file briefs amicus curiae;

(4) The Court erred in failing to grant the relief requested by their Intervening Petition;

(5) The Court erred in adopting Paragraph 8(c) of Part II of its decree requiring the licensing of pictures by competitive bidding under certain circumstances.

Wherefore, appellants pray that the judgment of the District Court denying the Motion for Leave to Intervene may be reversed, and that the provisions of Paragraph 8(c) of the judgment of the District Court of December 31, 1946, may also be reversed.

Thurman Arnold, Arnold & Fortas, 821 15th Street, N. W., Washington 5, D. C.; Paul Williams, General Counsel to Southern California Theatre Owners Association, Attorneys for Appellants.

Dated February 25, 1947.

[fol. 4092] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed March 7, 1947

To the Clerk of the United States District Court:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal herein and include in said transcript in the order given below the following papers, viz.:

1. The papers designated for inclusion in the transcript by the praecipe filed herein by the plaintiff, United States of America, with the exception of the Rules of Arbitration called for by paragraph 3 hereof and the papers called for by paragraphs 15 through 23 thereof.

2. Notice of Motion, Motion for Leave to Intervene and Intervening Petition of American Theatres Association, Inc., and Southern California Theatre Owners Association, et al., dated September 20, 1946.

3. Order denying intervention of American Theatres Association, Inc., et al., dated January 21, 1947 (also contained in Exhibit 3 to Statement as to Jurisdiction set forth in Paragraph 10 below).

[fol. 4091-4093] 4. Petition of American Theatres Association, Inc., et al., for Allowance of Appeal, dated February 25, 1947.

5. Assignment of Errors and Prayer for Reversal by American Theatres Association, Inc., et al., dated 25, 1947.

6. Order Allowing Appeal of American Theatres Association, Inc., et al., dated February 26, 1947.

7. Appeal bond.

8. Citation accompanying Order Allowing Appeal, dated February 26, 1947.

9. Statement Required by Rule 12 of the Rules of the Supreme Court of the United States.

10. Statement as to Jurisdiction Submitted with Petition for Appeal by American Theatres Association, Inc., et al., and Exhibits thereto.

11. This Praecipe.

12. Proof of Service of the documents designated in paragraphs 4, 5, 6, 8, 9, 10 and 11, above.

Said transcript is to be prepared as required by law and the Rules of this Court and Rules of the Supreme Court of the United States, and is to be filed in the office of the Clerk of the Supreme Court of the United States.

Thurman Arnold, Arnold & Fortas, 821 15th Street, N. W., Washington 5, D. C.; Paul Williams, General Counsel to Southern California Theatre Owners Association, Attorneys for American Theatres Association, Inc., et al, Appellants.

Dated March 6, 1947.

[fol. 4094] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed February 28, 1947

W. C. Allred, et al., Petitioners herein, feeling themselves aggrieved (1) by the final order of the District Court for the Southern District of New York entered the 23rd day of January, 1947, denying said petitioners leave to intervene in the above-entitled action, and (2) by the final decree made and entered in the above-entitled action the 31st day of December, 1946, do hereby petition for an appeal from said order and said final decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herein.

Wherefore, petitioners pray that an appeal be allowed to the Supreme Court of the United States, that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which the said order and decree were based, duly authenticated, be sent to the [fol. 4095] Supreme Court of the United States under the rules of said Court in such cases made and provided.

Dated: February 27, 1947.

Jackson, Nash, Brophy, Barringer & Brooks, Christian, Barton, Parker & Boyd by John G. Jackson, 15 Broad Street, New York 5, N. Y., Counsel for Petitioners.

[fol. 4096] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed February 28, 1947

W. C. Allred, et al., Petitioners in the above-entitled action, file the following Assignment of Errors on which they will rely in their appeal to the Supreme Court of the United States:

1. The United States District Court for the Southern District of New York erred in refusing to grant Petitioners' application to intervene as of right in the above-entitled action.

2. The said Court erred in making the order, entered January 23, 1947, denying Petitioners' application to intervene.

3. The said Court erred in holding (if so held) that its judgment of December 31, 1946 is not binding on these Petitioners.

4. Said Court erred in holding (if so held) that representation of Petitioners' interests was adequate.

5. Said Court erred in holding (if so held) that Petitioners' application was not timely.

[fol. 4097] 6. Said Court erred in refusing to exercise its discretion to permit the Petitioners to so intervene.

7. The said Court erred in including in its final decree entered December 31, 1946 and more particularly in Section II thereof, the portions of paragraph 8 reading as follows:

"8. From licensing in the future any feature for exhibition in any theatre, not its own, in any manner except the following:

"(a) A license to exhibit each feature released for public exhibition in any competitive area shall be offered to the operator of each theatre in such area who desires to exhibit it on some run, (other than that upon which such feature is to be exhibited in the theatre of the licensor) selected by such operator, and upon uniform terms;

"(b) Each license shall be granted solely upon the merits and without discrimination in favor of affiliates, old customers or others;

"(c) Where a run is desired, or is to be offered, upon terms which exclude simultaneous exhibition in competing theatres, the distributor shall notify, not less than thirty days in advance of the date when bids will be received, all exhibitors in the competitive area, offering to license the features upon one or more runs, and in such offer shall state the amount of a flat rental as the minimum for such license for a specified number of days of exhibition, the time when the exhibition is to commence and the availability and clearance, if any, which will be granted for each such run. Within fifteen days after receiving such notice, any exhibitor in such competitive area may bid for such license, and in his bid shall state what run such exhibitor desires and what he is willing to pay for such feature, which statement may specify a flat rental, or a percentage of gross re- [fol. 4098] ceipts, or both, or any other form of rental, and shall also specify what clearance such exhibitor is willing to accept, the time and days when such exhibitor desires to exhibit it, and any other offers which such exhibitor may care to make. The distributor may reject all offers made for any such feature, but in the event of the acceptance of any, the distributor shall grant such license upon the run bid for to the highest responsible bidder, having a theatre of a size, location and equipment adequate to yield a reasonable return to the licensor. The method of licensing specified in this subdivision shall not be required in areas where there is no competition among theatres or in run, or in which there is no offer made by any exhibitor within the time above mentioned. The words 'exclude simultaneous exhibition' shall be held to mean the exhibition of a specified run in one theatre with clearance over other theatres in the competitive area. The words 'competitive area' shall refer to the territory occupied by more than one theatre in which it may fairly and reasonably be said that such theatres compete with each other for the exhibition of features on any run.

"(d) Each license shall be offered and taken theatre by theatre and picture by picture."

8. The said Court erred in holding that it was empowered and authorized under the provisions of the Sherman Anti-Trust Act to include in its decree the above quoted paragraphs.

Wherefore, Petitioners pray:

(1) That the action of the District Court in denying Petitioners' application to intervene may be held erroneous and that said order accordingly be reversed; and

[fol. 4099] (2) That the action of the District Court in including in the final decree of December 31, 1946 the paragraphs hereinbefore set forth may be held erroneous and said decree accordingly reversed and the cause remanded for the elimination of the aforesaid paragraphs in the decree; and

(3) For such other relief as the Court may deem just and proper.

Dated: February 27, 1947.

Jackson, Nash, Brophy, Barringer & Brooks; Christian, Barton, Parker & Boyd, by John G. Jackson, 15 Broad Street, New York 5, N. Y., Counsel for Petitioners.

[fol. 4100] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed February 28, 1947

A petition for appeal filed by the above named Petitioners from the order of this Court entered January 23, 1947, denying said petitioners leave to intervene in the above-entitled action and from the final decree in the above-entitled action made and entered by this Court on the 31st day of December, 1946, together with the prayer for reversal, assignment of errors and statement as to jurisdiction, having been presented to and considered by this Court, it is

Ordered that an appeal as prayed for in said petition for appeal be and the same hereby is allowed to the Supreme Court of the United States; and it is

Further ordered that security for costs on appeal be and the same hereby is fixed in the sum of $2,000;
[fol. 4101] Further ordered that the Clerk of this Court shall prepare and certify a transcript of the record, proceedings and decree and transmit the same to the Supreme Court of the United States within forty days from this date.

Dated: February 27th, 1947.

Augustus N. Hand, Circuit Judge; Henry W. Goddard, District Judge; John Bright, District Judge.

[fols. 4102-4105] Citation in usual form, Filed February 28, 1947, omitted in printing.

[fols. 4106-4109] In United States District Court

[Title omitted]

Order Extending Time

Upon the annexed affidavit of Albert C. Bickford, duly sworn to on the 3rd day of April, 1947, making application pursuant to Rule 11 of the Rules of the Supreme Court of the United States for the time of the appellants Paramount Pictures, Inc., Paramount Film Distributing Corporation, Loew's Incorporated, Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, RKO Midwest Corporation, Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation (sued herein as Vitagraph Inc.), Warner Bros. Circuit Management Corporation, Twentieth Century-Fox Film Corporation and National Theatres Corporation to docket their cases on appeal and to file the records thereof with the Clerk of the Supreme Court of the United States be extended to May 10, 1947, it is

Ordered that the time of the said appellants hereinbefore named to docket their cases on appeal and to file the records thereof with the Clerk of the Supreme Court be and the same hereby is extended to May 10, 1947.

Dated, New York, N. Y., April 3, 1947.

Augustus N. Hand, Circuit Judge; Henry W. Goddard, District Judge; John Bright, District Judge.

[fols. 4110-4115] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME

Upon the annexed affidavit of George A. Raftery duly sworn to the 31st day of March, 1947, making application pursuant to Rule 11 of the Rules of the Supreme Court of the United States for the time of the appellants, United Artists Corporation, Columbia Pictures Corporation and Columbia Pictures of Louisiana, Inc., to docket their cases on appeal and to file the records thereof with the Clerk of the Supreme Court of the United States, be extended to May 10, 1947, it is

Ordered, that the time of the said appellants United Artists Corporation, Columbia Pictures Corporation and Columbia Pictures of Louisiana, Inc., to docket their cases on appeal and to file the records thereof with the Clerk of the Supreme Court, be and the same is hereby extended to May 10, 1947.

Dated: New York, March 31, 1947.

Augustus N. Hand, Circuit Judge; Henry W. Goddard, District Judge; John Bright, District Judge.

[fols. 4116-4121] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME

Upon the annexed affidavit of Irving Moross, duly verified the 14th day of March, 1947, making application pursuant to Rule 11 of the rules of the Supreme Court of the United States, that the time of the appellants Columbia Pictures Corporation and Columbia Pictures of Louisiana, Inc., to docket their case on appeal and to file the record thereof with the Clerk of the Supreme Court of the United States, be extended for a period of forty days, it is

Ordered that the time of said appellants to docket their case on appeal and to file the record thereof with the Clerk of the Supreme Court be and the same is hereby extended for a period of forty days from and after the date hereof.

Dated: New York, March 14, 1947.

Augustus N. Hand, Circuit Judge, Henry W. Goddard, District Judge, John Bright, District Judge.

[fols. 4122-4125] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME

In the above-entitled cause the United States of America, plaintiff, having made and filed its petition by Harold Lasser, Special Attorney, is praying for an extension of time within which to file and docket the certified copy of the record on file herein.

It is therefore ordered and adjudged that the return date of the citation heretofore issued in the within cause be and the same is extended for an additional period to and including May 10, 1947; and that the said plaintiff be and hereby is granted to and including the 10th day of May, 1947 within which to file and docket the certified copy of the record on appeal herein in the Office of the Clerk of the Supreme Court of the United States.

Dated this 31st day of March, 1947.

Augustus N. Hand, U. S. Circuit Judge, Henry W. Goddard, U. S. District Judge, John Bright, U. S. District Judge.

[fols. 4126-4130] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME

Good cause appearing therefor, and upon motion of Thomas Turner Cooke, Esq., counsel for Universal Pictures Company Inc. (sued herein as Universal Corporation and Universal Pictures Company Inc.), Universal Film Exchanges Inc., and Big U Film Exchange Inc., appellants herein, it is

Ordered, by the undersigned, the judges who signed the order allowing the appeal and issued the citation herein, that the return day of said citation be extended for a period of forty (40) days, and that the said appellants be, and they hereby are, granted to and including the 10th day of May, 1947, within which to file and docket the certified copy of

the record on appeal herein in the Office of the Clerk of the Supreme Court of the United States.

Dated: New York City, March 25, 1947.

Augustus N. Hand, United States Circuit Judge,
Henry W. Goddard, United States District Judge,
John Bright, United States District Judge.

[fols. 4131-4134] In the District Court of the United States

[Title omitted]

Order Extending Time

In the above entitled cause, the petitioners, W. C. Allred, et al., and the petitioners American Theatre Association, Inc., et al., having made and filed their petition by John G. Jackson, praying for an extension of time within which to file and docket the certified copy of the Record on Appeal herein, it is therefore

Ordered and adjudged that the return date of the Citations heretofore issued in this cause be and the same is extended to and including May 10, 1947, and that said W. C. Allred, et al., petitioners, and American Theatre Association, Inc., et al., petitioners, be and hereby are granted to and including the 10th day of May, 1947, within which to file and docket the certified copy of the Record on Appeal herein in the office of the Clerk of the Supreme Court of the United States.

Dated: 4/4/47.

Augustus N. Hand, Circuit Judge, Henry W. Goddard, District Judge, John Bright, District Judge.

[fol. 4135] In the District Court of the United States

[Title omitted]

Stipulation Providing for Consolidation of Records, etc.—Filed April 28, 1947

It is hereby stipulated and agreed between all of the parties to this suit, by their respective counsel, that the clerk of this court may prepare and transmit to the Supreme Court of the United States one consolidated record upon

which all of the appeals heretofore filed by said parties may be heard, and that said record shall consist of the following:

1. Copies in chronological order of all of the documents specified by the appellants in their respective praecipes, except the exhibits and typewritten transcript of the testimony and arguments.

2. In lieu of the typewritten transcript of the testimony and arguments a printed copy thereof shall be included in the form in which it was printed for the use of the expediting court.

3. All of the exhibits received in evidence shall be included in the record in their original form.

4. The time within which the record herein may be filed in the Supreme Court may be extended to May 10, 1947.

Dated: April 21, 1947.

United States of America, by Robert L. Wright, by Harold Lasser, Special Assistant to the Attorney [fol. 4136] General; Simpson, Thacher & Bartlett, Attorneys for Defendants Paramount Pictures, Inc., et al.; John W. Davis, Attorney for Defendant Loew's Incorporated; Donovan, Leisure, Newton, Lumbard & Irvine, Attorneys for Defendants Radio-Keith-Orpheum Corporation, et al.; Joseph M. Proskauer and Robert W. Perkins, Attorneys for Defendants Warner; Dwight, Harris, Koegel & Caskey, Attorneys for Defendants Twentieth Century-Fox Film Corporation and National Theatres Corporation; Schwartz & Frohlich, Attorneys for Defendants Columbia Pictures Corporation, et al.; Thomas Turner Cooke, Attorney for Defendants Universal Pictures Corporation, et al.; O'Brien, Driscoll & Raftery, Attorneys for Defendant United Artists Corporation.

[fols. 4137-4138] [File endorsement omitted.]

[fols. 4139-4140] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 79

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD NECESSARY FOR CONSIDERATION THEREOF—Filed May 23, 1947

1. Now comes the appellant in the above entitled cause and for its statement of points upon which it intends to rely in its appeal to this Court adopts the points contained in its assignment of errors heretofore filed herein.

2. Appellant designates for printing the portions of the record listed in the schedule attached to the stipulation attached hereto and expressly made a part hereof which has been executed by all of the parties herein.

Dated this 23d day of May, 1947.

George T. Washington, Acting Solicitor General.

[fol. 4141] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

Nos. 79-84

[Titles omitted]

[fol. 4142] STIPULATION

It is Hereby Stipulated and Agreed by the undersigned as follows:

1. The Clerk shall print only so much of the record as is designated in the attached schedule. Any of the parties may refer to and quote in its brief or argument any part of the record (including exhibits), and may supply printed copies thereof as an appendix or supplement to its brief.

2. In lieu of reprinting the transcript of the proceedings before the District Court, forty additional copies thereof, as printed for use in the District Court, shall be

furnished to the Clerk of the Supreme Court for inclusion in the printed Supreme Court record.

Dated May 23, 1947.

Robert L. Wright, Special Assistant to the Attorney General, Attorney for the United States of America. Whitney North Seymour, Attorney for Paramount [fol. 4143] Pictures, Inc., et al. John W. Davis, Attorney for Loew's Incorporated. Ralstone R. Irvine, Attorney for Radio-Keith Orpheum Corporation, et al.: Joseph M. Proskauer, Robert W. Perkins, Attorney for Warner Bros. Pictures, Inc., et al. John F. Caskey, Attorney for Twentieth Century-Fox Film Corporation and National Theatres Corporation. Schwartz & Frohlich, Attorney for Columbia Pictures Corporation, et al. Thomas Turner Cooke, Attorney for Universal Pictures Corporation, et al. Edward C. Raftery, George A. Raftery, O'Brien, Driscoll & Raftery, Attorney for United Artists Corporation.

[fol. 4144] Schedule

Amended and Supplemental Complaint filed November 14, 1940.

Answer of National Theatres Corporation to Amended and Supplemental Complaint.

Answer of Twentieth Century-Fox Film Corporation to Amended and Supplemental Complaint.

Answer of Loew's Incorporated et al. to Amended and Supplemental Complaint.

Answer of Paramount Pictures Inc. et al. to Amended and Supplemental Complaint.

Answer of Radio-Keith-Orpheum Corporation et al. to Amended and Supplemental Complaint.

Answer of Keith-Albee-Orpheum Corporation to Amended and Supplemental Complaint.

Answer of Warner Bros. Pictures, Inc. et al. to Amended and Supplemental Complaint.

Answer of Columbia Pictures Corporation to Amended and Supplemental Complaint.

Answer of United Artists Corporation to Amended and Supplemental Complaint.

Answer of Universal Corporation et al. to Amended and Supplemental Complaint.

Consent Decree, Rules of Arbitration and Appeals entered November 20, 1940.

Application for Modification of Consent Decree Filed by Plaintiff August 7, 1944.

Motion by Plaintiff for Temporary Injunction filed February 5, 1945.

Stenographic Minutes of Hearing on March 5, 1945.

[fol. 4145] Expediting Certificate of the Attorney General.

Opinion of District Court dated June 11, 1946.

Plaintiff's Proposed Decree dated October 8, 1946.

Plaintiff's Proposed Decree dated June 19, 1946.

Proposed Decree of Defendants Paramount et al.

Proposed Decree of Defendant United Artists.

Proposed Decree of Universal Defendants.

Memorandum of Columbia re Proposed Findings and Decree dated September 10, 1946.

Supplemental Memorandum of Columbia re Proposed Findings and Decree dated October 16, 1946.

Findings of Fact and Conclusions of Law of Expediting Court, dated December 31, 1946.

Decree of Expediting Court entered December 31, 1946.

Memorandum of Expediting Court re Findings and Decree dated December 31, 1946.

Motion of Paramount et al. to Amend and Modify Conclusions of Law and Judgment.

Motion of United Artists to Amend and Modify Conclusions of Law and Judgment.

Motion of Universal Corporation et al. to Amend Findings of Fact and Decree.

Memorandum Opinion of Expediting Court re Motions to Amend and Clarify Findings and Judgment.

Ordered entered February 11, 1947 re Motions to Amend and Clarify Findings and Decree.

Plaintiff's Petition for Appeal.

Plaintiff's Assignment of Errors and Prayer for Reversal.

Plaintiff's Statement as to Jurisdiction.

[fol. 4146] Plaintiff's Praecipe.

Order Allowing Plaintiff's Appeal.

Loew's RKO, Warner and Fox Petitions for Appeals.

Assignments of Errors.
Order Allowing Appeals.
Statements as to Jurisdiction of Paramount, Loew's, Fox, RKO and Warner.

Paramount defendants':

Separate Petitions for Appeal.
Assignments of Errors.
Order Allowing Appeals.

Columbia defendants':

Appeal Bond.
Statement Required by Rule 12.
Citation.
Proof of Service of Appeal Papers and of Statement Required by Rule 12.
Petition for Appeal.
Assignment of Errors.
Statement as to Jurisdiction.
Order Allowing Appeal.
Praecipe.

United Artists':

Petition for Appeal.
Order Allowing Appeal.
Assignment of Errors and Prayer for Reversal.
Statement as to Jurisdiction.
Praecipe.

Universal defendants':

Petition for Appeal.
Assignments of Error and Prayer.
[fols. 4147-4148] Praecipe.
Order Allowing Appeal.

Praecipe of Paramount, Loew's, RKO, Warner and Fox.
Counter-Praecipe of Paramount, Loew's, RKO, Warner and Fox.
Order extending time of Paramount, RKO, Warner, Fox and Loew's to Docket Cases on Appeal and File Records to May 10, 1947.
Order extending time of United Artists and Columbia to Docket Cases on Appeal and File Records to May 10, 1947.

Order dated March 14, 1947, extending time of Columbia to Docket Case on Appeal and File Records for a period of 40 days.

Order extending Plaintiff's time to Docket Case on Appeal and File Records to May 10, 1947.

Order extending time of Universal to Docket Case on Appeal and File Records to May 10, 1947.

Stipulation providing for consolidation of records, etc.

[fols. 4149-4152] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

Nos. 80-81

[Title omitted]

STATEMENT OF POINTS AND DESIGNATION OF RECORD—Filed May 23, 1947

The appellants in Nos. 1349 and 1350 for their statement of the points on which they intend to rely in their respective Appeals to this Court adopt the points contained in their assignments of errors heretofore filed herein.

Said appellants for their respective Appeals refer to the entire record filed in this Court on May 8, 1947, as necessary for the consideration of the foregoing points. Said appellants designate as parts of the record to be printed by the Clerk of the Supreme Court of the United States only so much of the record as is designated in the Stipulation filed in this Court on May —, 1947.

John W. Davis, Attorney for Loew's Incorporated. Joseph M. Proskauer & Robert W. Perkins, Attorney for Warner Brothers, Inc., et al. Ralstone R. Irvine, Attorney for Radio-Keith-Orpheum Corporation, et al. Dwight, Harris, Koegel & Caskey, Attorney for Twentieth-Century Film Corporation and National Theatres Corporation. Whitney North Seymour, Attorney for Paramount Pictures, Inc., et al.

Service of the Foregoing Statement of Points to be Relied upon and Designation of Parts of Record Necessary for Consideration thereof is acknowledged this 23 day of May, 1947.

Robert L. Wright, Special Assistant to the Attorney General, Attorney for the United States of America.

[fol. 4153] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 82

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY AND DESIGNATION OF PARTS OF RECORD WHICH APPELLANTS THINK ARE NECESSARY FOR THE CONSIDERATION THEREOF—Filed May 13, 1947

Appellants, Columbia Pictures Corporation and Columbia Pictures of Louisiana, Inc., intend to rely upon each of their formal assignments of error, and adopt same as their statement of the points to be relied upon, but for convenience and brevity propose to group the discussion of said points as follows:

1. Plaintiff contended in the District Court that block [fol. 4154] booking was a violation of the Sherman Act. It based its contention upon the arbitrary and wholly unsupported argument that block booking involved the licensing of one or more pictures conditioned upon the sale of one or more other pictures—in other words, that appellants, as well as other distributors, made it a practice of compelling exhibitors to license pictures which the exhibitors did not want in order that the exhibitors could license pictures which they did want. The plaintiff apparently took the position, which the District Court adopted, that the mere licensing of pictures in groups or blocks was in and of itself a licensing upon condition. Appellants claim that they have an inherent right to license their pictures in groups at the beginning of the season, just as every manufacturer has a right to sell his entire output before he produces it, and that there is not a scintilla of evidence in this case that any exhibitor was forced to buy one picture in order to obtain another. In fact, not a single exhibitor was called to the stand by the plaintiff, and the definition of block booking in the findings (Finding No. 1) is wholly unsupported by any proof in this record. On the contrary, appellants' general sales manager, Abe Montague, testified that the exhibitors throughout the country have always wanted and presently clamor for block booking, particularly when it comes to smaller companies like appellants, because exhibitors use a great deal of appellants' product to fill out their double feature programs, and that block booking

gives them an assurance of product; that it is an economical way of transacting business both for appellants and for exhibitors, and that there is nothing inherently wrong or [fol. 4155] improper in licensing pictures in groups any more than it is wrong and improper for a book shop to sell fifty books to one customer, or for a group of copyright owners to license a thousand musical compositions to a radio broadcaster. Moreover, how is competition suppressed, even if applicants did condition licenses in the manner charged? Appellants own all of these copyrights. They compete with no one with respect to their own copyrights; and since they have a complete monopoly on their own copyrights, the courts have no power to weaken that monopoly.

2. Block booking as an industry practice has existed for over a quarter of a century. It has been litigated and passed upon and approved by two Circuit Courts of Appeals in *Federal Trade Commission* v. *Paramount*, 57 Fed. (2d) 152, and *West Ways Theatre, Inc.* v. *Twentieth Century Fox Film*, 30 Fed. Supp. 830, aff'd. 113 Fed. (2) 932. Moreover, in *U. S.* v. *Crescent*, 323 U. S. 173, which affirmed a judgment in favor of the Government against a large independent circuit in Tennessee, block booking was shown to be the customary method of selling, but no findings were made attacking it or holding it to be a violation of the Sherman Act. The Courts thus having sanctioned block booking as a lawful practice, appellants were justified in believing that they had a right to continue to sell their pictures in that manner; and they should not be exposed at this time to the danger of facing treble damage suits for having acted in good faith for this long period of time with the sanction of the courts. It was no more unlawful for the appellants to sell their pictures in groups or blocks on December 31, 1946 (the date of the Decree herein) than it was in the years (1932, 1940 and 1944) when the above named cases were decided.

[fol. 4156] 3. The District Court has created a system of restrictions upon the licensing of pictures which amounts to a compulsory license upon these copyrighted works and in essence means that appellants have to put their pictures up on the auction block, sell to the highest bidder, forego the good will of their tried and true customers, and become for all purposes a public utility. Appellants contend that

the Court below had no jurisdiction to make such provisions in its decree; that sitting as an anti-trust Court it was limited merely to the injunctive process, and that even if it wished to go beyond that and to embark upon a system of regulation of an entire industry (which is in effect what it does), the method of the regulation violates the constitutional property rights of appellants and completely destroys their monopolies in their respective copyrights. Appellants claim that they have the inherent right to license their pictures to their old customers and to preserve their good will in the industry, built up for over twenty years; that they have a right to bargain with each exhibitor with respect to the terms of his license, and that right cannot be taken away from them; that they are not affected with a public interest; that they are not a public utility and certainly not a public utility for 18,000 theatres; and that the monopoly granted to them under their copyrights is very wide and there is no compulsory provision in the Copyright Law with respect to motion pictures.

4. Appellants contend that since under this decree they are acting lawfully and singly, and not in conspiracy or combination with any of the other defendants, they have a perfect right to sell their pictures in any manner they [fol. 4157] see fit, to whomever they please, and upon such terms as they think proper and reasonable. While the District Court may enjoin a conspiracy, it cannot go beyond that, and it cannot regulate lawful conduct under the guise of preventing restraint of trade. The philosophy of the Sherman Act is to keep competition open, not to impose restrictions on trade and commerce. The District Court has no power of regulation such as a Court of Bankruptcy would have.

5. Appellants contend that this decree is in and of itself an instrument of restraint and actually stifles competition, and therefore it itself violates the Sherman Act. They urge that the District Court has discriminated against appellants as well as United Artists and Universal and other small distributors who do not own theatres, and that this decree operates to favor the five major defendants who do own and operate theatres. By the provisions for competitive bidding (which is a polite way of saying, "Put your pictures on the auction block"), the five major defendants have a right to take the pictures produced by them re-

spectively and turn them over to their own theatres upon any terms they see fit. Then those theatres come into active competition with independent theatres. The practical result is that when one of these affiliated theatres bids against an independent theatre for the better pictures the affiliated theatre, paying very little for the pictures licensed from its affiliated producer, has unlimited funds with which to compete against the independent, and it is easy to see who will be the highest bidder. This system of bidding would result in giving the affiliated theatres a tremendous economic advantage over independent theatres [fol. 4158] and deprive the latter of the better pictures. That certainly was not the intention of the Sherman Act. The effect of such system is to compel appellants to deprive their old customers of product and to hand over their pictures to affiliated theatres and thus actively help to destroy their old and independent customers.

6. Appellants contend that as proprietors of the respective copyrights of their motion pictures, past and future, they possess a monopoly which is not abhorrent to the Sherman Anti-Trust Act and which that Act was not designed to interfere with; that the decree seriously interferes with the appellants' monopoly in these copyrights, and that the provisions of the decree expressly take from appellants the most important exclusive rights vested in them by the Copyright Act of 1909. (17 U. S. C. A.)

7. Appellants contend that they are being deprived of their property without due process of law in that their right to freely market their product is impinged upon and restricted, and they contend that this decree violates their rights under the Fifth Amendment to the Constitution.

8. While this was a long trial and many exhibits were received in evidence, appellants believe that the portions of the record designated by them in their praecipe are sufficient for the consideration of this Court in determining the issues presented by appellants' appeal. Appellants have limited themselves to the pleadings and other necessary filed papers and to the testimony of only three witnesses, Abraham Montague, William A. Scully and Paul N. Lazarus, and a few pages of argument and concessions. Appellants' exhibits, to wit: C-1, C-2, C-4, C-5, C-6, C-7, C-9, [fols. 4159-4163] C-10, are mainly charts showing the

method of appellants' selling over the years. No useful purpose will be served by designating specifically each portion of this tremendous record which is unnecessary for the Court's consideration on appellants' appeal. We prefer to state that aside from the documents and testimony set forth in appellants' praecipe, all other portions of this record are unnecessary in considering the question of block booking and competitive bidding which will be all that is being submitted by appellants for this Court's consideration and determination.

Schwartz & Frohlich, By Louis D. Frohlich, Member of Firm, Counsel for Appellants, Columbia Pictures Corporation and Columbia Pictures of Louisiana, Inc., 1450 Broadway, Borough of Manhattan, New York 18, N. Y.

[fols. 4164-4168] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 83

STATEMENT OF POINTS AND DESIGNATION OF RECORD—Filed July 8, 1947

The appellant United Artists Corporation for its Statement of Points on which it intends to rely in its appeal to this Court, adopts the points contained in its Assignment of Errors heretofore filed herein,

Said appellant, for its respective appeals, refers to the entire Record filed in this Court on May 8, 1947, as necessary for the consideration of the foregoing points. Said appellant designates as parts of the Record to be printed by the Clerk of the Supreme Court of the United States only so much of the record as is designated in the stipulation filed in this Court on May —, 1947.

May 21, 1947.

(S.) Edward R. Raftery, Attorney for Appellant United Artists Corporation.

[fol. 4169] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 84

[Title omitted]

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY AND OF PARTS OF RECORD NECESSARY FOR CONSIDERATION THEREOF—Filed May 22, 1947

The appellants state that the points on which they intend to rely are those presented by their Assignments of Error and each of them.

The appellants state that the following parts of the record (in addition to the exhibits which have been filed in original form and the transcript of the proceedings before the District Court, forty copies of which, as printed for use in the District Court, have been furnished to the Clerk of this Court for inclusion in the printed record) are necessary for the consideration of the foregoing points, and, therefore, designate them as the parts of the record to be printed by the Clerk of the Supreme Court of the United States:

1. Amended and Supplemental Complaint filed November 14, 1940.

2. Answer of Universal Corporation et al. to Amended and Supplemental Complaint.

3. Opinion of District Court dated June 11, 1946.

[fols. 4170-4171] 4. Decree proposed by Defendant Universal Pictures Corporation.

5. Findings of Fact and Conclusions of Law of Expediting Court, dated December 31, 1946.

6. Decree of Expediting Court entered December 31, 1946.

7. Memorandum of Expediting Court re Findings and Decree dated December 31, 1946.

8. Motion of Universal Corporation et al. to Amend Findings of Fact and Decree.

9. Memorandum Opinion of Expediting Court re Motions to Amend and Clarify Findings and Judgment.

10. Order entered February 11, 1947 re Motions to Amend and Clarify Findings and Decree.

11. Petition for Appeal.

12. Assignments of Error and Prayer for Reversal.

13. Praecipe.

14. Order Allowing Appeal.

15. Order extending time of Universal to Docket Case on Appeal and File Record to May 10, 1947.

16. Stipulation providing for consolidation of records, etc.

Thomas Turner Cooke, Charles D. Prutzman, Counsel for Appellants.

May 20, 1947.

Service of the foregoing points to be relied on and designation of parts of record to be printed is hereby acknowledged this 20th day of May, 1947.

Harold Losser, Counsel for Appellee.

[fol. 4172] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 85

[Title omitted]

STATEMENT OF POINTS AND DESIGNATION OF RECORD—Filed May 21, 1947

Comes now American Theatres Association, Inc., et al., petitioners-appellants herein, by their attorneys, and for their Statement of Points on which they intend to rely hereby adopt their Assignments of Error.

And for their designation of the parts of the record which they deem necessary for the consideration of the foregoing points, these petitioners-appellants concur in the designation thereof (incorporated herein by reference thereto) filed by the appellant in *United States of America, appellant*, v. *Paramount Pictures, Inc., et al., appellees*, in cause No. 1348, October Term 1946, pending in this Court

and also involving an appeal from the decree of December 31, 1946, as amended, partially appealed from herein, and also including:

1. Notice of Motion, Motion for Leave to Intervene and Intervening Petition of American Theatres Association, [fol. 4173] Inc., et al., dated September 20, 1946.

2. Order denying intervention of American Theatre Association, Inc., et al., dated January 21, 1947 (also contained in Exhibit 3 to Statement as to Jurisdiction designated in paragraph 6 below.)

3. Petition of American Theatres Association, Inc., et al., for Allowance of Appeal, dated February 25, 1947.

4. Assignments of error and prayer for reversal of American Theatres Association, Inc., et al., dated February 25, 1947.

5. Order allowing appeal of American Theatres Association, Inc., et al., dated February 26, 1947.

6. Statement of American Theatres Association, Inc., et al., required by Paragraph 2 of Rule 12 of the Rules of the Supreme Court of the United States, dated February 26, 1947.

7. Praecipe of American Theatres Association, Inc., et al., dated March 6, 1947.

8. Order of April 4, 1947, extending time to docket appeal of American Theatres Association, Inc., et al., to May 10, 1947, and attached affidavit-petition.

9. Proof service of the documents designated in paragraphs 3, 4, 5, 6, and 7 above.

10. This document and proof of service thereof.

Thurman Arnold, Arnold & Fortas, 821—15th Street, N. W., Washington, D. C.; Paul Williams, General Counsel to Southern California Theatre Owners Assn., Attorneys for Petitioners-Appellants.

[fol. 4174] IN THE SUPREME COURT OF THE UNITED STATES

No. —

AMERICAN THEATRES ASSOCIATION, INC., et al., Petitioners-Appellants

v.

UNITED STATES OF AMERICA, Plaintiff-Respondent,

and

PARAMOUNT PICTURES, INC., et al., Defendants-Respondents

AFFIDAVIT OF SERVICE

Thurman Arnold, being first duly sworn, on oath deposes and says that he is the attorney for American Theatres Association, Inc., et al., petitioners-appellants herein; that on the 21st day of May, 1947, he placed a copy of the attached Statement of Points and Designation of Record, filed herein by said petitioners-appellants, in the United States Post Office, with proper postage thereon, full prepaid, addressed to the following at the addresses indicated:

Hon. John F. Sonnett, Assistant Attorney General, Department of Justice, Washington, D. C.

Simpson Thacher & Bartlett, 120 Broadway, New York, New York, Attorneys for Paramount.

Davis Polk Wardwell Sunderland & Kiendl, 15 Broad Street, N. Y. C., Attorneys for Loew's, Inc.

George S. Leisure, Esq., 2 Wall Street, New York, New York, Attorney for Radio-Keith-Orpheum Corporation and affiliated Defendants.

[fols. 4175-4176] Joseph M. Proskauer, Esq., 11 Broadway, New York, New York, Attorney for Warner.

Dwight, Harris, Koegel & Caskey, 100 Broadway, New York, New York, Attorneys for Twentieth Century-Fox Film Corporation and National Theatres Corporation.

Schwartz & Frohlich, 1450 Broadway, New York, N. Y., Attorneys for Columbia.

Charles D. Prutzman, Esq., 1250 6th Avenue, New York, N. Y., Attorney for Universal.

O'Brien, Driscoll & Raftery, 152 W. 42nd Street, New York, N. Y., Attorneys for United Artists Corporation.

Thurman Arnold, Arnold & Fortas, 821 Fifteenth St., N. W., Washington 5, D. C., Attorney for American Theatres Association, Inc., et al., Appellants.

Subscribed and sworn to before me this 21st day of May, 1947. Marguerite E. O'Brien, Notary Public, D. C. My Commission Expires April 14, 1951.

[fol. 4177] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 86

[Title omitted]

STATEMENT OF POINTS AND DESIGNATION OF RECORD—Filed May 23, 1947

Come Now, W. C. Allred, et al., appellants herein, by their attorney, and for their Statement of Points on which they intend to rely hereby adopt their Assignments of Error.

And for their designation of the parts of the record which they deem necessary for the consideration of the foregoing points, these appellants concur in the designation thereof (incorporated herein by reference thereto) filed by the appellant in *United States of America, appellant* v. *Paramount Pictures, Inc., et al., appellees*, in cause No. 1348, October Term 1946, pending in this Court and also involving an appeal from the decree of December 31, 1946, as amended, partially appealed from herein, and also including the transcript of the record as certified by the Clerk of the United States District Court for the Southern District of New York, on behalf of these appellants, except that it will be unnecessary to include the cost bond on appeal.

John G. Jackson, 15 Broad Street, New York 5, N.Y., Attorneys for Petitioners-Appellants, W. C. Allred, et al.

[fol. 4178] Service of a copy of this document is acknowledged May 19, 1947.

John F. Sonnett, Assistant Attorney General, by Harold Lasser, Department of Justice, Washington, D. C. May 20th—Simpson, Thacher & Bartlett, 120 Broadway, New York, New York, Attorneys for Paramount. May 20, 1947—Davis, Polk, Wardwell, Sunderland & Kiendl, 15 Broad Street, New York, New York, Attorneys for Loew's, Inc. William J. Donovan, by George Vinion, Jr., 2 Wall Street, New York, New York, Attorney for Radio-Keith-Orpheum Corporation and affiliated Defendants. Joseph M. Proskauer, Esquire & Robert W. Perkins, 11 Broadway, New York, New York, Attorneys for Warner. Dwight, Harris, Koegel & Caskey, 100 Broadway, New York, New York, Attorneys for Twentieth Century-Fox Film Corporation and National Theatres Corporation. Schwartz & Frohlich, 1450 Broadway, New York, New York, Attorneys for Columbia. Charles D. Prutzman, Esquire, 1250 Sixth Avenue, New York, New York, [fols. 4179-4180] Attorney for Universal. O'Brien, Driscoll & Raftery, 152 West 42nd Street, New York, New York, Attorneys for United Artists Corporation.

[fols. 4181-4182] SUPREME COURT OF THE UNITED STATES

Nos. 79-84, October Term, 1947

ORDER NOTING PROBABLE JURISDICTION—June 23, 1947.

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. Further consideration of the motion of American Theatres Association and others for leave to intervene is postponed to the hearing of the cases on the merits.

Mr. Justice Jackson took no part in the consideration or decision of this order.

[fol. 4183] SUPREME COURT OF THE UNITED STATES

Nos. 85 & 86, October Term, 1947

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION—June 23, 1947.

The statements of jurisdiction in these cases having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing of the cases on the merits.

Mr. Justice Jackson took no part in the consideration or decision of this order.

[fol. 4184] Endorsed: Files Nos. 52,212, 52,213, 52,214, 52,215, 52,216, 52,217, 52,218, 52,219, Southern New York, D. C. U. S., Term No. 79, The United States of America, Appellant, vs. Paramount Pictures, Inc., Paramount Film Distributing Corporation, Loew's Incorporated, et al. Term No. 80, Loew's Incorporated, Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., et al., Appellants, vs. The United States of America. Term No. 81, Paramount Pictures, Inc., and Paramount Film Distributing Corporation, Appellants, vs. The United States of America. Term No. 82, Columbia Pictures Corporation and Columbia Pictures of Louisiana, Inc., Appellants, vs. The United States of America. Term No. 83, United Artists Corporation, Appellant, vs. The United States of America. Term No. 84, Universal Pictures Company, Inc., (sued herein as Universal Corporation and Universal Pictures Company, Inc.) Universal Film Exchanges Inc., and Big U. Film Exchange, Inc., Appellants, vs. The United States of America. Term No. 85, American Theatres Association, Inc., Southern California Theatre Owners Association, Joseph Moritz, et al., Appellants, vs. The United States of America, Paramount Pictures, Inc., Paramount Film Distributing Corporation, et al. Term No. 86, W. C. Allred; Charles E. Beach and Elizabeth L. Beach, Partners trading as Beach and Beach, et al., Appellants, vs. The United States of America, Paramount Pictures, Inc., Paramount Film Distributing Corporation, et al. Filed, May 8, 1947. Term Nos. 79 October Term 1947. 80 October Term 1947. October Term 1947. 82 October Term 1947. 83 October Term 1947. 84 October Term 1947. 85 October Term 1947. 86 October Term 1947.